

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA

v.

WILLIAM R. HALL

Criminal Case No.:
3:24 CR 18

August 16, 2024

COMPLETE TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE ROBERT E. PAYNE
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

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TRACY J. STROH, RPR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT

I N D E X

WITNESSES

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EXHIBITS

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1 (The proceeding commenced at 1:30 p.m.)

2 THE CLERK: In the matter of Criminal Case
3 Number 3:24 CR 18, *United States of America v. William R.*
4 *Hall*.

5 The United States is represented by Avi Panth,
6 and the defendant is represented by Charles Samuels.

7 Are counsel ready to proceed?

8 MR. PANTH: The government's ready.

9 Good afternoon, Your Honor.

10 MR. SAMUELS: On behalf of my client, we are
11 ready to proceed.

12 THE COURT: All right.

13 MR. PANTH: Shall I present the case,
14 Your Honor?

15 THE COURT: Please.

16 MR. PANTH: Your Honor, we're here for a
17 sentencing hearing for William R. Hall, who was charged in
18 a one-count criminal information and pled guilty
19 preindictment to conspiracy to commit bribery, in
20 violation of 18 U.S.C. Section 371. The maximum penalties
21 for this offense, 5 years in prison, 3 years supervised
22 release, \$250,000 fine, and a \$100 special assessment.

23 The guidelines in this case reflect that the
24 defendant has a criminal history category of III, a total
25 offense level of 19, leading to a guidelines range of 37

1 to 46 months.

2 The defendant -- and the government has no
3 objections or corrections to the PSR as stated, and my
4 understanding is the defendant has not raised any
5 objections or corrections either.

6 Defendant does have a motion for downward
7 variance and a motion for downward departure that the
8 Court will also need to take up. And the government's
9 moved for a one level reduction for acceptance of
10 responsibility.

11 THE COURT: If the defendant is remanded, do you
12 ask for immediate confinement?

13 MR. PANTH: I will, Your Honor. And that is --
14 the Court is permitted wide discretion on this. I would
15 look to, you know, the certainty of -- I mean, number one,
16 defendant, he has showed up to proceedings here, but he
17 does have a criminal history and, you know, that, paired
18 with, you know, if the Court decides to impose a period of
19 incarceration, gives rise to a potential risk of flight.
20 But, I mean, candidly, I think it's time for him to show
21 up and, you know, he's been aware that this day has been
22 coming.

23 THE COURT: All right.

24 Will you stand up, Mr. Hall?

25 Have you read the presentence report?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Have you been over it with your
3 lawyer?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Did you understand it?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: At the back of it, in pages 26
8 through 29, there are discussions of the mandatory
9 conditions, the standard conditions, and the special
10 conditions of supervised release. Did you go over those
11 with the probation officer and your lawyer?

12 THE DEFENDANT: Yes, sir. I'm currently on a
13 federal supervised release so I'm very understanding of
14 the rules and conditions.

15 THE COURT: But did you go over the ones at the
16 back?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And on the pages I cited?

19 Show them to him there, Mr. Samuels.

20 MR. SAMUELS: Yes, sir. And you said which
21 page?

22 THE COURT: Twenty-six, 27, 28, and there's one
23 sentence on the top of 29.

24 Did you all go over all those and do you
25 understand them is the question?

1 MR. SAMUELS: Judge, we went line by line
2 through the entire presentence report, including those we
3 went through.

4 THE COURT: Is that right, Mr. Hall?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And do you understand those
7 conditions?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. And are there any
10 objections to the presentence report?

11 MR. SAMUELS: There are none from our side,
12 Judge.

13 THE COURT: All right. The presentence report
14 will be accepted, adopted and filed as tendered. It will
15 be placed in the record. It will be under seal. It will
16 be available in the event of any appeal except for the
17 confidential sentencing recommendation part of it.

18 All right. You may be seated.

19 Now, there's a motion for downward departure.
20 The first aspect of that motion, ECF Number 34, is a
21 motion to depart from the guidelines pursuant to guideline
22 section 5K1.1.

23 I, yesterday, entered an order denying that
24 because that is a motion that, under the guidelines, is to
25 be made in the first instance by the government. So I

1 think the law is clear on that. Did you have something
2 else that I ought to know about in that respect that
3 allows the defendant to bring it?

4 MR. SAMUELS: No, sir, not in respect to that
5 specific portion of my motion.

6 THE COURT: Yes. All right.

7 And then there's a motion to depart pursuant to
8 5K2.0. Do you have evidence on that?

9 MR. SAMUELS: Judge, we don't have evidence on
10 that. We would rely on our motion and the arguments made
11 there, as well as our response to the Commonwealth's
12 response to our motion.

13 THE COURT: You mean the government.

14 MR. SAMUELS: Oh, excuse me. Yes, the
15 government.

16 THE COURT: So you have no evidence?

17 MR. SAMUELS: Judge, the evidence that we
18 have --

19 THE COURT: The answer is yes or no.

20 MR. SAMUELS: Yes, sir, we have evidence.

21 THE COURT: All right. Can I have -- then you
22 also have a motion for a variance. That's ECF 33. Do you
23 have evidence on that?

24 MR. SAMUELS: It would be substantially similar
25 evidence, yes, sir.

1 THE COURT: All right. Present your evidence.

2 MR. SAMUELS: Judge, would you be willing to
3 allow me to discuss the variance first?

4 THE COURT: Why?

5 MR. SAMUELS: I believe there is a stronger
6 argument there than for the other.

7 THE COURT: Well, is that saying you're
8 withdrawing the request for the departure and want to rely
9 on the variance instead?

10 MR. SAMUELS: No, sir. I believe there's an
11 argument for both. I was just trying to give you the best
12 argument first.

13 THE COURT: Well, I think that's what Justice
14 Frankfurter told lawyers, "If you can't win on that one,
15 you can't win on any of them." So -- but -- so we'll go
16 with ECF 33.

17 MR. SAMUELS: Yes, sir.

18 Judge, you've heard about my client's -- or
19 you've read about my client's situation. He was a model
20 prisoner. He did get two shots in eight years. Apart
21 from this situation, he --

22 THE COURT: He did what?

23 MR. SAMUELS: He got written up twice in eight
24 years, apart from this situation.

25 Since his release, he not only was successfully

1 employed almost immediately, but then he got a better
2 paying job. I have here letters from his employer stating
3 that he is an important part of their team, and I'd ask to
4 introduce that now.

5 THE COURT: Any objection?

6 MR. PANTH: No objection, Your Honor.

7 THE COURT: What is it, Defense Sentencing
8 Exhibit 1?

9 MR. SAMUELS: Yes, sir, please.

10 THE COURT: I've read it. It's admitted.

11 (Defendant Exhibit Number 1 was admitted.)

12 MR. SAMUELS: Judge, next, as you recall from my
13 written motions, his sister, while he was in FCI for the
14 last eight years, was taking care of their mother. She is
15 essentially in hospice care at this point.

16 Since his release, he has been taking care of
17 her in spite of the fact that she lives an hour and a half
18 away from him. His sister has written a letter describing
19 the changes she's seen in him since his release and the
20 work he has done with his mother.

21 THE COURT: Is that Defense Sentencing
22 Exhibit 2?

23 MR. SAMUELS: Yes, sir, please.

24 THE COURT: Any objection?

25 MR. PANTH: No objections, Your Honor.

1 THE COURT: It's admitted without objection.

2 (Defendant Exhibit Number 2 was admitted.)

3 MR. SAMUELS: Your Honor, next is a letter --

4 THE COURT: Just a second. I'm reading it.

5 MR. SAMUELS: Oh, I'm sorry.

6 THE COURT: All right. I've read it.

7 MR. SAMUELS: Your Honor, next is a letter from
8 his mother describing the need of him to continue to care
9 for her.

10 THE COURT: That will be Defense Sentencing
11 Exhibit 3.

12 MR. SAMUELS: Thank you, Judge.

13 Then Sentencing Exhibit 4 for me, I have a copy
14 of his work schedule. They were so confident in him that
15 they have scheduled him throughout the rest of the year.
16 And his days are in red. So his job is very secure.

17 THE COURT: Thank you.

18 Any objection?

19 MR. PANTH: No objections to any of those
20 exhibits.

21 THE COURT: Exhibits 3 and 4 admitted without
22 objection.

23 (Defendant Exhibit Number 3 was admitted.)

24 (Defendant Exhibit Number 4 was admitted.)

25 MR. SAMUELS: Judge, I would like to call my

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1 client to testify about his current situation.

2 THE COURT: All right. Call him to the stand
3 and have him sworn.

4 WILLIAM HALL,
5 called by the defendant, first being duly sworn, testified
6 as follows:

7 DIRECT EXAMINATION

8 BY MR. SAMUELS:

9 Q Mr. Hall, about eight years ago you were convicted of
10 a federal crime, correct?

11 THE COURT: Just for the record, your name?

12 THE WITNESS: My name is William Hall.

13 THE COURT: You're the defendant in this action?

14 THE WITNESS: I'm sorry?

15 THE COURT: You're the defendant in this action?

16 THE WITNESS: Yes, sir.

17 THE COURT: All right.

18 BY MR. SAMUELS:

19 Q Mr. Hall, approximately eight years ago you were
20 convicted of a federal crime?

21 A That is correct.

22 Q And you've spent the last approximately eight years
23 in federal correctional institutes?

24 A That is correct.

25 Q All right. In that time, tell the judge about your

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1 development.

2 A You know, when I first caught my charge, I was not
3 living correctly, and prison saved me. I went to prison.
4 It saved my life. I spent my time in prison trying to
5 make myself be a different person. I didn't want to come
6 out of prison the person I was before I went into prison.
7 I stayed out of trouble. I did what I was supposed to do.
8 I did everything I was supposed to do.

9 Upon -- before I got released from prison, I was
10 approached by a prison guard, and he was going to be
11 missing a lot of work, and he asked me to help him.

12 Q And let me interrupt you there. How long did it take
13 after he first approached you before you agreed to --

14 A About four months.

15 Q All right.

16 A And --

17 Q And he approached you about -- was it selling
18 something?

19 A Yeah. He wanted me to help him make money, whether
20 it be contraband, whatever it was. And I was not
21 comfortable with this. And he kept pressuring me and
22 pressuring me, and eventually I said okay. I made a very
23 bad decision. I agreed to help him.

24 Q When you say he was pressuring you, did he suggest
25 that you would get a bad name in the yard?

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1 A Yeah. He was putting me in a very uncomfortable
2 situation, you know. He was the prison guard.

3 Q Did he suggest that he would set you on -- not
4 literally set you on fire, but make it so that your life
5 was --

6 A I mean, yeah. Prison guards can make your life
7 easier or rougher, you know, and he definitely was, when I
8 wasn't willing to help him, making my life rougher.

9 THE COURT: Well, did he threaten you?

10 THE WITNESS: He didn't directly threaten me,
11 no, sir. It was just more his aggressive demeanor and the
12 treatment.

13 BY MR. SAMUELS:

14 Q So at that point after four months, you gave in?

15 A I gave in and I told him, I said, I will not do
16 anything that is illegal in this prison. You know,
17 tobacco in prison, if you get caught with tobacco in
18 prison, they make you mow the grass or clean up, you know,
19 extra duty.

20 So I said, you know what. I will agree to do
21 that because I know I'm not going to get in no serious
22 trouble for that. I had no idea it would become something
23 like this.

24 This happened for a one-month period. They were
25 pulling 150, 160 people off the yard and transferring them

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1 to another prison. I was quickly to volunteer myself to
2 be one of those people to get out of that situation.

3 Q And that's how you ended up at Fort Dix?

4 A That's how I ended up at another prison, at Fort Dix.

5 Q Now, in that month's time, you did help with this.

6 You're not denying that you --

7 A I'm not denying that. I did it. You know, he -- you
8 know, the government has painted a picture of a big
9 conspiracy, but reality of it is he brought me tobacco a
10 couple of times and I sent him his half of the money for
11 it. I didn't even get --

12 THE COURT: Brought you what?

13 THE WITNESS: Tobacco.

14 A And I didn't even get no money for it. I made \$900,
15 you know, and that's it. And this went on for a month.

16 I transferred to another prison and went back to
17 living properly. I got released from prison, and the
18 minute I got to the halfway house I went to work. I
19 visited my mother and I seen the condition my mother was
20 in, because I hadn't seen my mother in eight years. I
21 seen the condition my mother was in and immediately
22 started using my home passes to go take care of my mother
23 every weekend.

24 BY MR. SAMUELS:

25 Q Now, you never, in prison, tested positive for any

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1 illegal substances?

2 A I've never tested positive for drugs.

3 Q And you're on color code now while you're on
4 probation?

5 A That is correct.

6 Q And you have not tested positive at any point now --

7 A No.

8 Q -- either?

9 A No. And my PO speaks very highly of me. I currently
10 see a federal psychiatrist to make sure that -- to help
11 me.

12 But immediately from leaving the halfway house,
13 you know, I had a job in Lexington, a very good job. I
14 moved an hour and a half away to be close to my mother to
15 take care of her. I get up at 3 in the morning. I drive
16 an hour and a half to work. I work a 12-hour shift. I
17 drive an hour and a half home. I stop by and make sure my
18 mother has food, make sure her medicine is right, make
19 sure she has clean diapers, make sure she's had her bath.

20 I'm married. My wife is 14 weeks pregnant. I'm
21 doing everything I should do.

22 Q You have other children also?

23 A I have other children that I take care of.

24 Q And you are required to pay child support for those
25 kids?

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1 A Absolutely.

2 Q And because of your job, you're able to make those
3 payments?

4 A I'm able to make those payments.

5 Q And you have an eight-year arrears that you need
6 to --

7 A That is --

8 Q -- catch up on --

9 A -- correct.

10 Q -- as well, correct?

11 THE COURT: Wait a minute. One of you at a time
12 talk.

13 MR. SAMUELS: Sorry.

14 A Basically, yeah, I am doing everything that a normal
15 citizen does, you know. I'm not -- I'm not doing no life
16 of crime. I'm not doing anything. Prison fixed me. It
17 did.

18 I know that I committed a crime on this case. I
19 know that things went wrong. I know I should not have
20 agreed to help him, but I got what I deserved the first
21 time. I got fixed. To go back to prison right now in my
22 life, the way I'm living life, I just -- I can't wrap my
23 head around it.

24 Do I deserve a penalty? Yes. Absolutely. I
25 just hope that when you lay down your sentence, you

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1 take -- maybe consideration of an ankle monitor or
2 something. I don't know. But I'm only taking care of my
3 family. That's it.

4 BY MR. SAMUELS:

5 Q Are you the asking the judge to consider something
6 besides active incarceration?

7 A I absolutely am. I'm asking to consider any other
8 measure, whether it would be home incarceration, ankle
9 monitor, so I can still support my wife, take care of my
10 mother.

11 You know, me and my wife live paycheck to
12 paycheck. If I go away, will she still be able to pay our
13 rent and take care of our unborn child? No.

14 And the sad thing is this happened years ago
15 while I was in prison. This didn't happen last month.
16 This is years ago while in prison.

17 Q Now, the government did indicate that you were
18 cooperative, that this proceeded by an information. What
19 happened when you were first approached by the government?

20 A The minute the government approached me, they asked
21 me, they said, listen, would you be willing to do a
22 preindictment resolution? I said absolutely. What do you
23 need to know? I answered all their questions. I told
24 them everything they wanted to know immediately.

25 I don't want to look at myself as a convict or a

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1 criminal. And they're the government. They're asking
2 questions. I'm going to answer them, you know. I'm not
3 trying to -- I just want to be a normal citizen again, you
4 know, and I don't see myself in that light no more and I
5 don't want to be in that light.

6 Q You have a specific set of vocational skills.

7 A Yes.

8 Q Have you ever taught anything at, like, a community
9 college or any sort of college-level classes?

10 A I used to teach college classes. I taught at
11 Universal Technical Institute. I taught automotive
12 design, collision technology. You know, that's what I do
13 normally is I work in collision work. I build cars and
14 motorcycles.

15 Q Were you the education manager?

16 A I was an education manager, and I was also a
17 curriculum writer.

18 THE COURT: Also what?

19 THE WITNESS: A curriculum writer, where I wrote
20 the curriculum for the classes.

21 A I know -- I know there was a crime committed. I know
22 I should not have helped that man. For what we did, to
23 put me back in prison for three or four years, man,
24 that's --

25 BY MR. SAMUELS:

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1 Q Your oldest child is 16?

2 A No. My oldest child is 32.

3 Q I'm sorry. The under the age of 18 children that you
4 have, your oldest child is --

5 A She is 16 years old.

6 Q And you've redeveloped a relationship with her?

7 A I've redeveloped a relationship with her, which was
8 very challenging because she had a lot of animosity due to
9 me going to prison.

10 Matter of fact, you know, I send her a text
11 message every day. We just now, within the past couple of
12 months, where she'll let me come see her and we'll go out
13 and do things together. I went and visited her yesterday
14 before I left town to come here, you know.

15 Q So if you go to jail -- or prison for three years,
16 she'll be 19 when you get out?

17 A Yeah.

18 Q And your youngest will be about 3?

19 A Yeah, because she's -- she's due in February.

20 THE COURT: What?

21 THE WITNESS: I'm sorry. My wife is due in
22 February. She's pregnant now.

23 A Like I said, I'm not living a criminal life. My
24 parole officer, if he could be here, he would tell you I'm
25 doing everything I'm supposed to do, you know. And I

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1 shouldn't be rewarded for that. I know that. That's what
2 you're supposed to do. But I'm not living a life of
3 crime, you know, and now I'm sitting here facing, in your
4 courtroom, something from two, three years ago in prison.
5 You know, I've made it to the world. I served my time.
6 I -- you know, I didn't -- I'm just trying to live life
7 and put my family in a better situation, you know.

8 And at this point, if I stay at my job -- my job
9 is waiting for this proceeding to end and they want to
10 advance me to a much higher position as soon as -- if I
11 come back from here and say, yes, I'm able to still work,
12 the day I come back I'm able to go to a much higher
13 position and I could buy a home by February for me and my
14 wife. I could put a deposit down on a house, you know,
15 and put my family in a home.

16 Q Your mom's condition --

17 A I would like -- if I can get my home, put my mother
18 in the home with us.

19 Q Tell me about how dire it is.

20 A She has Cushing's disease.

21 THE COURT: What's that?

22 THE WITNESS: Cushing's disease.

23 THE COURT: Yes.

24 A She is completely handicapped. She cannot walk. I
25 do have to help her change her diapers. I do have to help

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1 her bathe. My work schedule is two days on, two days off.
2 And that's why I keep that job. I drive an hour and a
3 half to go to that job because of that. Because those two
4 days off, I can cook her meals for the next two days. I
5 can cook her meals that she can package up and be able to
6 heat up and eat for the next two days. I've got to make
7 sure she takes her medication right because sometimes she
8 forgets to take it or sometimes she might forget that she
9 already took it and took it again. So I lay it out in her
10 little boxes and then I check it and make sure she took
11 her medicine the way she's supposed to be taking it.

12 Q And the sister that had been caring for her has moved
13 away?

14 A Yes. She's further away now. And, you know, she
15 owns a business that's -- she's a struggling business
16 that's failing, you know, and she has two children of her
17 own, and she's doing all she can to keep her business
18 afloat.

19 Q Is there anyone else that can help your mother if
20 you're not available?

21 A Nobody.

22 MR. SAMUELS: Those are my questions, Judge.

23 THE COURT: All right. Cross-examination.

24 **CROSS-EXAMINATION**

25 BY MR. PANTH:

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1 Q Now, Mr. Hall, you recall that you came to this
2 courthouse on April 8th of 2024, right?

3 A Yes, sir.

4 Q And you came before I believe one of our magistrate
5 judges?

6 A Yes, sir.

7 Q And in that, you had what was called a plea colloquy;
8 is that right?

9 A What is it?

10 Q Let me explain. So in that hearing, the judge asked
11 you -- put in front of you something called a statement of
12 facts, right?

13 A That's correct.

14 Q And put in front of you something called a plea
15 agreement, right?

16 A That's correct.

17 Q And you had a chance to go over the statement of
18 facts and plea agreement before you came to court, right?

19 A That's correct.

20 Q And you reviewed it and you, in fact, signed it,
21 right?

22 A Yes, sir.

23 Q Both documents, you signed them?

24 A Yes, sir.

25 Q And in both documents, when you signed them, you

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1 asserted that these are true and correct to the best of
2 your knowledge and understanding, right?

3 A Yes.

4 Q Okay. So now, in that hearing the Court asked you is
5 everything in the statement of facts true and correct,
6 right?

7 A Uh-huh.

8 Q And you said yes; isn't that right?

9 A Yeah.

10 Q Okay. I want to go over some items from your
11 statement of facts. And I apologize. I don't -- if I had
12 known that you would've taken the stand, I would have had
13 a separate copy for you, but I'm reading off the PSR.
14 This is page 7. So at various times -- well, actually,
15 let me take a step back.

16 So your statement of facts listed an individual
17 named CC-2; is that right? Kayla Cronin.

18 A Yes.

19 Q Are you familiar with Kayla Cronin?

20 A Yes.

21 THE COURT: Just a minute. Do you have a
22 statement of facts?

23 MR. SAMUELS: Yes, sir, I do. I was just
24 whispering up to Mr. Panth.

25 THE COURT: The clerk's going to print one out

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1 for him.

2 MR. SAMUELS: I could hand one over to him.

3 THE COURT: All right.

4 Go ahead and print it anyway, please.

5 MR. SAMUELS: You can just give it to him. I
6 don't need it.

7 BY MR. PANTH:

8 Q And what I'll be talking about right now is part
9 9(c). So if you can go to 9, subsection (b) and (c).

10 A Page 9?

11 Q You got it? Not page 9. It's paragraph number 9.

12 A Okay.

13 Q Take a moment and just make sure you can refresh
14 yourself. I want to make sure you have a chance to take a
15 look through it.

16 A Okay.

17 Q Okay. So now, at a high level, I mean, I think -- my
18 understanding of what took place, and what it says here,
19 is that -- I mean, so making reference to 9(d). It says,
20 "Hall further told Cronin to send Hall's share of the
21 proceeds of the smuggling operation to various associates
22 (including Hall's mother)"; is that right?

23 A Uh-huh.

24 THE COURT: Is that yes?

25 THE WITNESS: Yes. Yes, I had her -- I asked

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1 her one time to send my mother -- you know, the money was
2 supposed to go half to the correction officer, half to me.
3 I asked Cronin one time to send my mother \$1000. She sent
4 her \$900. That's the only money I ever received.
5 Ms. Cronin kept my half of the money. I never received
6 another dime.

7 BY MR. PANTH:

8 Q Okay. So you're saying in the entire scheme, Cronin
9 only ever sent your mother \$900 on one occasion?

10 A Yes.

11 Q That's your testimony now?

12 A Yes.

13 Q Okay. Well, let's go on here. So looking at 9(e),
14 "Hall told Cronin the exact amounts to be paid to CC-2,
15 and Cronin, in turn, paid such amounts to CC-2, pocketing
16 small amounts of money for facilitating the transaction."
17 That's what that says, right?

18 A Yeah.

19 Q Okay. All right. Let's move on to part (f).

20 THE COURT: Well, is that true?

21 MR. PANTH: I'm sorry?

22 THE COURT: Is what he said in there true?

23 THE WITNESS: I mean, that was the arrangement,
24 yes. Ms. Cronin was supposed to keep \$200 -- we sold the
25 tobacco for \$2200. The correction officer was supposed to

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1 get \$1000. Ms. Cronin was supposed to get \$200. I was
2 supposed to get \$1000. Ms. Cronin was to hold my share of
3 the money until I came home from prison.

4 Well, she never gave me my share of the money.
5 I never received any more money than the \$900 she sent my
6 mom. I asked her to send her \$1000. She sent her 900.
7 That was the only money I ever received.

8 THE COURT: What paragraph were we reading from?

9 MR. PANTH: Now we're on part (f), which is on
10 page 7 of the PSR, at the very top of page 7. But this --

11 THE COURT: I want to go back to (e).

12 MR. PANTH: Yes, Your Honor.

13 THE COURT: It says, "Hall told Cronin the exact
14 amounts." That tells me that there was more than one
15 amount, one time this happened.

16 THE WITNESS: Yes, sir. It happened two
17 separate times, yes, sir.

18 THE COURT: Two times.

19 THE WITNESS: Yes. That's why there was two
20 accounts. Just like in my PSR, I had -- they gave me two
21 points of enhancements for each time, and it was a total
22 of four points of enhancements. Yes, sir.

23 THE COURT: All right.

24 BY MR. PANTH:

25 Q Okay. And it wasn't just tobacco, right? It was

William Hall - Cross

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1 also steroids.

2 A No. It was only tobacco.

3 Q So you're saying that steroids never got smuggled
4 into the prison as a result of this scheme?

5 A No. We've been arguing this fact since day one. And
6 you can look through any of the records. My attorney has
7 brought this issue up since day one.

8 This correction officer had steroids on him
9 every single day. We worked out and lifted weights in our
10 work area.

11 THE COURT: He did what?

12 THE WITNESS: He had steroids on him every
13 single day. He took steroids every day while we worked
14 out. One time he was like, "Try this," and he squirted it
15 in my mouth, and I started having adverse reactions from
16 it.

17 BY MR. PANTH:

18 Q He forced it in your mouth?

19 A Well, he was like, "Here, try it, try it, try it."

20 And I was like, "I don't know. I never did it
21 before."

22 He's like, "It will be okay."

23 Q Did he force you to take steroids or not? That's a
24 simple question.

25 A No. I agreed to take it. But that was the only time

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1 steroids and me ever had -- you know, he squirted it in my
2 mouth one time, and then I asked Ms. Cronin on the phone
3 what was that -- ask him what that was he gave me, because
4 I started having problems from it.

5 Q Okay. Let's move on. So then you say that "Cronin,
6 acting solely at Hall's direction, delivered funds to CC-2
7 by mailing money to CC-2 by U.S. Postal Service."

8 So you designated exactly the amounts of money
9 that Cronin would send to Hall; is that right?

10 A She would send to Mr. Thomas.

11 Q No. But you told her exactly how much to send to
12 Mr. Thomas, right?

13 A Yes.

14 Q And you told her when to send it to Mr. Thomas,
15 right?

16 A Yes.

17 Q Okay. And "At Hall's direction, Cronin also passed
18 coded messages about the introduction of prohibited
19 objects into FCC Petersburg." That is also what you said
20 here at the statement of facts, right?

21 A That is correct.

22 Q Okay. All right. I want to go --

23 THE COURT: What was the prohibited object?

24 THE WITNESS: Tobacco.

25 BY MR. PANTH:

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1 Q Okay. I want to go down, if I can, to part 10,
2 10(c). So at the very bottom there it says, "Hall then
3 directed Cronin to send \$1000 to the landlord." Who was
4 the landlord, by the way?

5 A That would be Mr. Thomas.

6 Q Okay. "Send \$1000 to Hall's mother, and keep \$200
7 for herself." Do you see that?

8 A Yes.

9 Q Okay. And that happened, right?

10 A Yeah. That's -- well, she sent her 900. She didn't
11 send her the thousand.

12 Q That's when you're saying she only sent her 900?

13 A Right. That's correct.

14 Q Okay. Got it. Then if I can, I want to go to part
15 (g). Same paragraph, part (g). At the very bottom there,
16 "In this conversation, Cronin agreed to pay CC-2 2000,
17 retain 2000 for Hall, as directed by Hall." That
18 happened, right?

19 A Yeah. But like I say --

20 Q But you're saying you never got the money?

21 A I never got the money. She kept all that.

22 Q Your mom never got the money?

23 A She got the original 900. That was it.

24 Q But no more?

25 A No more. Cronin was supposed to hold on to the money

William Hall - Cross

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1 for me until I came home, and when I came home, she said
2 no, she spent it.

3 Q Okay. All right. So who would you sell the tobacco
4 to?

5 A I gave the tobacco to one person, and I believe he's
6 the other person on this case that's never mentioned where
7 he said he sent Cronin money.

8 I gave it to one person. That was it. I wasn't
9 in there selling cigarettes to all the prisoners. I took
10 it from Mr. Thomas and handed it to one person.

11 Q And who was that person?

12 A We called him Six. I don't know his government name.

13 Q Your testimony is you don't know his name?

14 A We called him Six. In prison everybody goes by a --
15 like, a nickname or whatever.

16 Q Do you know his name?

17 A I do not know his government name.

18 Q Okay. Okay. So what would he do -- how much would
19 tobacco go for in the prison?

20 A In the prison, when he would bring it to me -- I
21 don't know what he would sell it for. I have no idea.

22 Q I'm asking for your transaction with him.

23 A My transaction was \$2200.

24 Q \$2200 for how much tobacco?

25 A For -- for a pound of tobacco.

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1 Q Okay. So you would give him a pound of tobacco, and
2 he would give you \$2200?

3 A Right.

4 Q How would he pay you \$2200?

5 A He would send it to Kayla on Cash App.

6 Q Okay. All right.

7 THE COURT: \$2200 for tobacco?

8 THE WITNESS: Yes, sir.

9 THE COURT: And it was a pound?

10 THE WITNESS: Yes, sir.

11 THE COURT: How did you get a pound of tobacco?
12 Did you take cigarettes and break them down into -- tear
13 them apart or did you buy --

14 THE WITNESS: The officer would bring in a loose
15 bag of tobacco. Now, whether he went to the store and
16 bought it as a loose bag or how he produced that bag, I
17 don't know that.

18 BY MR. PANTH:

19 Q All right. Okay. But you were -- you were
20 essentially directing Kayla Cronin on who to send the
21 money to, how to send the money and in what amounts,
22 right?

23 A Yes.

24 Q Okay. All right. Now, there were certain times in
25 this market -- you're saying the market -- it was only

William Hall - Cross

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1 sold to one other person, but in this marketplace, you had
2 too much inventory on hand, right?

3 A I mean, I always went to the same person.

4 Q Let me say this another way. So there were times
5 when you had too many bikes that you could not sell in the
6 prison?

7 THE COURT: Too many what?

8 MR. PANTH: So bikes was a code name for
9 tobacco.

10 A We referred to the tobacco as motorcycle units.

11 THE COURT: You had too many bags --

12 A Basically, the officers kept bringing it, and the guy
13 that I was giving it to didn't have it all sold yet. So I
14 had to wait.

15 THE COURT: You say "kept bringing it." It
16 sounds like there's a lot of events. You say it's only
17 twice. I'm getting confused.

18 THE WITNESS: Well, what he did -- this happened
19 through a month period of time. I only sent him money
20 twice. But he actually, during that month, it was --
21 basically, he told me, "I'll bring you ten of them for
22 \$10,000, and you sent me five and five." There was two
23 times I sent him money. But it didn't work out that way.
24 But that was the original plan, so to say.

25 BY MR. PANTH:

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1 Q Well, there were actually three separate bribes,
2 right?

3 In the statement of facts, there's one on
4 October 17th, one on October 22nd, and one on
5 November 27th, right? So --

6 A November 27th I wasn't even at that prison anymore.
7 I was at a whole other prison by then.

8 Q Okay. But there was still -- I mean, you still
9 directed Cronin to send money --

10 A It was from the original money that there was still
11 money owed.

12 THE COURT: When did you go to the other prison?

13 THE WITNESS: I left that prison I think in
14 October.

15 THE COURT: It says, on page 10, paragraph (o),
16 on or about November 6, you told Cronin something. Were
17 you communicating with her by telephone?

18 THE WITNESS: Yeah, I was communicating by
19 telephone. And after I moved to the other prison, there
20 was still money owed to the officer when I left, and I was
21 trying to make sure that he got his money that was owed to
22 him.

23 BY MR. PANTH:

24 Q So there were periods of time, then, when you had too
25 much tobacco that you could not sell, right?

William Hall - Cross

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1 A Yeah.

2 Q And in those times, you directed Cronin to stop
3 getting the tobacco into the prison. In other words, you
4 told Cronin to tell Thomas, stop bringing the tobacco in?

5 A That's correct.

6 Q So there were times when you told -- you essentially
7 communicated to Thomas, hey, stop it?

8 A Yeah.

9 Q Okay.

10 THE COURT: How many times?

11 THE WITNESS: Well, the one time I finally was
12 like, stop. Stop, please.

13 THE COURT: You say one time and then you said
14 times. I mean, you all are talking about using plurals
15 and singulars indiscriminately. I'm confused about how
16 many times.

17 THE WITNESS: He brought it in -- through that
18 one month period of time, he probably brought it in, like,
19 three times a week. He'd keep bringing it to me. So
20 there was -- he wanted a total of ten is what he was
21 trying to get to. So one week he brought me three.
22 Another week he brought me four. He was trying to get to
23 ten, and that was what he was trying to do. His goal was
24 to get \$10,000.

25 THE COURT: All right.

1 BY MR. PANTH:

2 Q And then on October 30th you told Cronin, "I can
3 still keep this shop up and running, and then start a new
4 shop, you know what I mean." And additionally, then you
5 said, "Because you know, for real, for real, me getting
6 landlord, a shop landlord that works with me the way
7 landlords working with me now, that's very rare, you know.
8 That's like a once in a lifetime opportunity."

9 You said that, did you not?

10 A Actually, in that conversation we were actually
11 talking about bringing an actual shop. That had nothing
12 to do with the tobacco and all that.

13 Q Oh, okay. So on one hand --

14 THE COURT: Whoa, whoa, whoa. I didn't
15 understand what that was all about.

16 MR. PANTH: Okay.

17 THE COURT: Somebody slow it down and put it in
18 perspective.

19 MR. PANTH: Yes, Your Honor.

20 THE COURT: Which paragraph are you talking
21 about?

22 MR. PANTH: We're referring now to subparagraph
23 (n).

24 BY MR. PANTH:

25 Q And let's take it piece by piece. So on

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1 October 30th, 2022, you're still incarcerated, right?

2 A Yeah.

3 Q And your testimony was --

4 THE COURT: But you're at that other prison now?

5 THE WITNESS: Yes.

6 BY MR. PANTH:

7 Q So you're still in prison on October 30th of 2022?

8 A Uh-huh.

9 Q And your earlier testimony was that you used
10 motorcycle shop language --

11 A We used motorcycle shop --

12 Q Please let me finish.

13 THE COURT: Wait a minute. Let the question be
14 asked and then you can answer it.

15 THE WITNESS: Yes, sir.

16 BY MR. PANTH:

17 Q So -- and this is clear in the statement of facts.
18 You used shop, bike, landlord and rent as code words for
19 the illicit activity that was taking place. True or
20 false?

21 A True.

22 Q Okay. So now, on October 30th of 2022, you say, "I
23 can still keep this shop up and running." I can still.
24 So you're talking about still keeping a shop that's in
25 existence as of that time. True or false?

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1 A True.

2 Q Okay. So you can still keep the shop up and running
3 and then start a new shop. You know what I mean. So at
4 this point, I mean -- when was your transfer to the other
5 facility?

6 A In October.

7 Q So that same month you were being transferred to
8 another prison facility?

9 A Yes.

10 Q And you're talking about starting a new shop, right?

11 A Yes.

12 Q Okay.

13 A But you're -- but that's out of context because --

14 THE COURT: But the word "shop" there, that
15 means -- that's a code word for the arrangement you all
16 had.

17 THE WITNESS: Yes, sir, we was using that code
18 word because we do run shops. We do run motorcycle shops.
19 So we were using that as a code word because we already
20 speak about that stuff. We do run shops.

21 THE COURT: I know, but here in this statement
22 of facts -- you've got it in front of you -- in paragraph
23 (n) --

24 THE WITNESS: Yes, sir.

25 THE COURT: -- you were talking about setting up

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1 a new operation. Where? In another prison or --

2 THE WITNESS: No. I was talking about
3 building -- we had already -- there's conversations that
4 they don't have in here where we were talking about
5 bringing the facility to -- I have bike employees who used
6 to build motorcycles for me who are looking for jobs. I
7 was getting ready to get out of prison. I was trying to
8 set up a new shop to where I could come out of prison and
9 going to work building motorcycles.

10 BY MR. PANTH:

11 Q But on October 30th, 2022, you weren't getting out of
12 prison then. You were being transferred to another prison
13 facility.

14 A My prison date was coming up. I was supposed to be
15 getting out in March.

16 Q And you're talking about opening a new bike shop with
17 Kayla Cronin? Because Kayla Cronin is on the other side
18 of this conversation, right?

19 A Kayla Cronin has always helped me with my finances,
20 the whole time I was in prison. The whole time I was in
21 prison, any finances I had from the free world, because
22 you have to have somebody in the free world to deal with
23 your finances.

24 Q Kayla Cronin came before this Court --

25 A I already know this.

William Hall - Cross

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1 THE COURT: Wait a minute. Wait a minute.

2 In paragraph (n) in front of you -- have you got

3 it? Have you read it? Page 10. Read it to yourself.

4 You say -- finish it up and let me know when you finish.

5 THE WITNESS: Okay.

6 THE COURT: All right. Are you finished?

7 THE WITNESS: Yes, sir.

8 THE COURT: You say, "I can still keep this shop
9 up and running." What shop are you talking about?

10 THE WITNESS: We currently have been trying to
11 open up a motorcycle shop.

12 THE COURT: Where?

13 THE WITNESS: In Lexington.

14 THE COURT: When you got out?

15 THE WITNESS: For when I got out.

16 THE COURT: "And then start a new shop."

17 THE WITNESS: We were trying to get that shop
18 up --

19 THE COURT: So you were thinking about getting a
20 new -- two shops going?

21 THE WITNESS: No. What I was referring to was
22 the shop in the prison and then getting a real motorcycle
23 shop, maybe using the money from that to open up an actual
24 motorcycle shop.

25 THE COURT: But you weren't talking about

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1 transacting business and selling tobacco in this
2 conversation?

3 THE WITNESS: No. I was talking about --

4 THE COURT: Okay. Now, the next one says,
5 "Because, you know, for real, for real, me getting
6 landlord." Who is that?

7 THE WITNESS: That I'm referring to as the
8 correction officer.

9 THE COURT: All right. And then "a shop
10 landlord that works with me the way landlords working with
11 me now." What did the landlord have to do with the shop?

12 THE WITNESS: What I was trying to explain --
13 what we were saying in this -- and like I say, they only
14 pulled out certain content. I was wanting to use the
15 money that we made from the correction officer to open up
16 a real shop to where when I got out of prison in a few
17 months, I could go to work there. That's what I was
18 trying to do. But in the end, I never even received none
19 of the money.

20 THE COURT: All right.

21 BY MR. PANTH:

22 Q So just to be clear, your testimony to this Court is
23 that you were actually using shop in two different
24 contexts?

25 A Yes.

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1 Q Within the same sentence, right?

2 So on one hand, you're referring to shop being
3 the illicit smuggling operation --

4 A Uh-huh.

5 Q -- and on the other hand, in that same sentence
6 you're using shop to refer to a legitimate business you
7 planned to open when you got out?

8 A Correct. That's meaning I could get another shop
9 going. That's what I was trying to say.

10 Q Okay. All right. And so when you said, "That's like
11 a once in a lifetime opportunity," you're referring to the
12 illegal smuggling operation that's taking place already at
13 that point, right?

14 A Yes.

15 Q Okay. So -- so -- okay. All right.

16 Let's move on, if we can, to part (u).

17 December 16th, 2022. Take a moment and just read through
18 it so you're familiar.

19 A Okay.

20 Q All right. So you told Cronin then in a recorded
21 phone call, "You need to make sure the landlord is still
22 playing ball because he may not be. So go ahead and send
23 him a message, maybe tonight, and say, hey, you know,
24 trying to drop a bike off." You said that, right?

25 A Uh-huh.

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1 Q And when you're talking about a bike there, you're
2 talking about this illicit smuggling operation, right?

3 A Yeah. We owed him money.

4 Q You owed him money for what?

5 THE COURT: No. The question is that you used
6 the word bike. What did you mean by bike in that
7 sentence?

8 THE WITNESS: The bike either meant tobacco or
9 the money owed for tobacco.

10 THE COURT: Well, what did it mean in that
11 sentence?

12 THE WITNESS: In that sentence, what I was
13 referring to is when I left, we owed the officer money
14 because he dropped off something before we left and the
15 people had not paid for it yet. And that's why I messaged
16 her saying, hey, make sure he's still okay, make sure he's
17 still playing ball, make sure he's still okay because we
18 haven't paid for it yet and I don't want him being upset.

19 BY MR. PANTH:

20 Q Okay. But there was a certain point when Thomas was
21 out of commission. Do you recall that?

22 A Yeah.

23 Q When he had his operation and he had taken extended
24 leave?

25 A That's when this started is after he left.

William Hall - Cross

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1 Q So when you say, "You need to make sure the landlord
2 is still playing ball" -- okay.

3 A I want to make sure he's still okay, he's not upset,
4 he's not going to be giving me problems in another prison.
5 All these correction officers talk.

6 Q That's fine.

7 MR. PANTH: I have no further questions,
8 Your Honor. Thank you.

9 THE COURT: Any questions? Anything else,
10 Mr. Samuels? Any other questions on redirect?

11 MR. SAMUELS: Judge, I don't have any other
12 questions. I just have argument.

13 THE COURT: Then you can step down, sir.

14 (Witness stood aside.)

15 THE COURT: All right. Any evidence?

16 MR. PANTH: Not from the government, Your Honor.

17 THE COURT: Any other?

18 MR. SAMUELS: Nothing else except for argument,
19 Judge.

20 THE COURT: All right. Go ahead.

21 MR. SAMUELS: Do you want me to approach?

22 THE COURT: Yes.

23 MR. SAMUELS: Your Honor, we're not asking for
24 active incarceration. We're specifically asking you not
25 incarcerate him today or for an active period of time. We

1 are asking, instead, for an alternative to incarceration,
2 and the reason is for everything that you've just heard.

3 If sitting in that chair was illegal and you as
4 a judge told me, an attorney, go sit in that chair, I
5 would go sit in that chair because you are a person in
6 authority over me and I don't want to be found in contempt
7 and thrown in the back. However, I am also committing a
8 crime by doing it.

9 That's the situation that we found Mr. Hall in
10 is a situation where he decided, after months of pressure,
11 to give in. He thought he was going to be able to help
12 his family, and he didn't very much. But everything
13 you've heard today --

14 THE COURT: That's the defense of coercion.

15 MR. SAMUELS: Judge --

16 THE COURT: That's the defense of coercion, also
17 the basis for a -- can be -- there can be departure --
18 ground for departure, but we're arguing the variance now.
19 And you say in it, your variance motion, page -- there's
20 no numbered pages at the bottom like there's supposed to
21 be, but page 2 of the document, it's 2 of 4 of the
22 ECF numbering system, "Mr. Hall was coerced or under
23 duress when he began participating in this conspiracy."

24 Now, if he's under duress, he's made an
25 improvident guilty plea and he didn't tell that to the

1 magistrate judge. So now you come to sentencing and you
2 raise what amounts to a substantive defense.

3 MR. SAMUELS: Judge, as I recall at the
4 allocution, we made two comments about the statement of
5 facts.

6 THE COURT: Mr. Zychowski, what is the guideline
7 section on departure?

8 MR. ZYCHOWSKI: For coercion?

9 THE COURT: Yeah.

10 MR. ZYCHOWSKI: 5K2.12.

11 THE COURT: 5K2.12, yeah. Thank you.

12 "If the defendant committed the offense because
13 of serious coercion, blackmail or duress, under
14 circumstances not amounting to a complete defense, the
15 Court may depart downward. The extent of the decrease
16 ordinarily should depend on the reasonableness of the
17 defendant's actions on the proportionality of the
18 defendant's actions to the seriousness of coercion,
19 blackmail or duress involved, and on the extent to which
20 the conduct would have been less harmful under the
21 circumstances as the defendant believed them to be.
22 Ordinarily, coercion will be sufficiently serious to
23 warrant departure only when it involves a threat of
24 physical injury, substantial damage to property or similar
25 injury resulting from the unlawful action of a third party

1 or from a national emergency. Notwithstanding this policy
2 statement, personal financial difficulties and economic
3 pressures upon a trade or business do not warrant a
4 downward departure."

5 So we wouldn't qualify. But there's really no
6 evidence here of any kind about coercion. It's just that
7 he -- as I understand it, the guard, Thomas, made the
8 request several times, and the guard -- there is a
9 relationship of subordinate/superior between the guard,
10 who is the superior, and the prisoner, who is the
11 subordinate, and the guard has some inchoate opportunities
12 to make life miserable for the defendant.

13 MR. SAMUELS: Yes, sir, give him the bad name in
14 the yard, set him on fire, those sorts of things.

15 THE COURT: Yeah. So you're not saying he had a
16 defense of coercion, are you?

17 MR. SAMUELS: No, sir. I'm saying that whenever
18 the situation you just heard about occurs, although it may
19 not be considered, under 5K2.12, a serious coercion, it is
20 still something to consider when looking at what this
21 gentleman ought to have happen to him.

22 THE COURT: So that would be the circumstances
23 of the offense.

24 MR. SAMUELS: Yes, sir.

25 THE COURT: I see.

1 MR. SAMUELS: And then you've also heard the
2 situation with his family. You've heard the fact that
3 he's become gainfully employed, that he is --

4 THE COURT: But that doesn't have anything to do
5 with committing the offense. That's raising the question
6 of post-offense rehabilitation.

7 MR. SAMUELS: Yes, sir. And that's why we
8 pled --

9 THE COURT: Which is a different matter. It
10 comes under the category of the history and
11 characteristics of the defendant.

12 MR. SAMUELS: Which is one of the things I
13 believe the Court has to consider when sentencing.

14 THE COURT: Yeah.

15 MR. SAMUELS: Yeah.

16 THE COURT: I'm just trying to figure out where
17 you are because your papers don't tell me where any of
18 this fits.

19 MR. SAMUELS: Well, Judge, hopefully my closing
20 will. He didn't get into trouble in prison. He is paying
21 his child support. He is supporting his family. He has
22 obtained not one but two jobs. He's providing for his
23 very, very sick mother even though it requires an extra
24 three hours a day just in driving.

25 And at the end of the day, Judge, this is

1 cigarettes. I don't know what a pound of tobacco turns
2 into in terms of actual cigarettes. I know that about
3 0.05 pounds is one cigarette, but as a lawyer, my math is
4 not good enough to get there very quickly.

5 What you're looking at, Judge, is a gentleman
6 who was in a situation where he admitted to it
7 immediately, did everything he could to cooperate. He
8 offered to provide additional information. He did nothing
9 but cooperate. And he's pled guilty to this crime, saving
10 the taxpayer money by doing it off of an information
11 instead of going through the whole rigmarole, and we have
12 an opportunity today, Judge, to not only acknowledge that,
13 but to acknowledge the \$40,000-a-year cost that it's going
14 to cost the federal government to house, feed and clothe
15 him when he could, instead, be one of the people paying
16 the taxes to make sure that those who are in prison are
17 getting what the bare minimum is that they need.

18 THE COURT: What do you think the record is
19 about whose idea the scheme was in the first place? Where
20 does the record show me about that?

21 MR. SAMUELS: I don't believe the record
22 specifically shows you whose idea it was. I do believe --

23 THE COURT: Well, his testimony is that it was
24 Thomas' idea because Thomas came to him.

25 MR. SAMUELS: Oh, yes, sir, I do believe that.

1 I thought you meant --

2 THE COURT: What about the rest of the record?

3 MR. SAMUELS: I thought you meant in the
4 statement of facts.

5 THE COURT: Anywhere.

6 MR. SAMUELS: I don't believe anywhere else in
7 the record it says who approached who. And as defense
8 counsel, it's very hard for us to prepare those kinds of
9 pieces of evidence. It's kind of like what Mr. Hall said.
10 If you take one or two sentences, yes, I did say those
11 things, but here's what they --

12 THE COURT: Take one or two sentences from
13 where?

14 MR. SAMUELS: From October 30th, 2022, or
15 December of 2022. Instead of the full conversation, you
16 don't want to read out of context what they mean. And I
17 think that's what the back and forth between Mr. Panth,
18 Your Honor, and Mr. Hall was all about is trying to
19 understand what was really being said.

20 But the bottom line is this gentleman sold
21 tobacco, making very little money, and paid a guard who
22 brought in the tobacco an amount based on the guard's
23 plan. And that's really what we're looking at here,
24 Judge.

25 I just can't stress enough --

1 THE COURT: You say based on the guard's plan.
2 In other words, the guard planned it.

3 MR. SAMUELS: Yes, sir, the guard --

4 THE COURT: And he talked the defendant into it.

5 MR. SAMUELS: Yes, sir, as you heard.

6 THE COURT: And the defendant got the money from
7 inside the prison.

8 MR. SAMUELS: Yes, sir. Well, it was -- it was
9 done over Cash App, but yes. So it's not like they were
10 handing him actual dollar bills.

11 THE DEFENDANT: No. You know, the guard told me
12 how much --

13 THE COURT: No, but the source of the money came
14 from prisoners.

15 THE DEFENDANT: Correct.

16 MR. SAMUELS: Yes, sir.

17 THE COURT: And then that money went to whom?

18 MR. SAMUELS: It went to --

19 THE DEFENDANT: Ms. Cronin.

20 MR. SAMUELS: -- Kayla Cronin, Correctional
21 Officer Thomas --

22 THE COURT: It went to Kayla Cronin.

23 MR. SAMUELS: Yes, sir.

24 THE COURT: And Cronin did what with it?

25 MR. SAMUELS: She kept \$200 of it. She sent

1 1000 of it to Mr. Thomas, the correctional officer. She
2 sent \$900 to Mr. Hall's mother, and then the rest she
3 kept.

4 THE COURT: Well, that's one transaction.

5 MR. SAMUELS: I believe we're here only on the
6 one count, yes, sir.

7 THE COURT: What?

8 MR. SAMUELS: I believe we're just here on the
9 one count, yes, sir. The statement of facts I believe
10 goes over the entire month period. I believe our
11 agreement was that he would be charged with the -- or pled
12 guilty to one count.

13 THE COURT: Well, but we're not talking about
14 one count. We're talking about -- we are talking about
15 one count, but we're not talking about one transaction.

16 MR. SAMUELS: Yes, sir.

17 THE COURT: We're talking about a conspiracy
18 that embodied several transactions.

19 MR. SAMUELS: Yes, sir.

20 THE COURT: So how many other instances were
21 there this 1000, 1000, 200 --

22 MR. SAMUELS: Off the top of my head --

23 THE COURT: -- split?

24 MR. SAMUELS: Off the top of my head, I do not
25 recall. I can ask my client, but I do not recall off the

1 top of my head.

2 THE COURT: I'm confused about what they were
3 asking him. I don't understand what the answer is. He
4 says he only got a total of \$900. That's one thing --

5 MR. SAMUELS: Yes, sir.

6 THE COURT: -- one transaction, and yet we're
7 discussing -- and the \$900 didn't go to him. It went to
8 his mother. Now, I'm confused about whether that's true
9 or not. He's raising his hand back there. You might want
10 to go talk to him.

11 THE DEFENDANT: I would like to clarify it.

12 MR. SAMUELS: Judge, he was just reviewing his
13 testimony with me. The one transaction where he received
14 the \$900 -- there were other transactions. However, he
15 did not receive any money for the other transactions.

16 THE COURT: Where did that money go?

17 MR. SAMUELS: He testified that Ms. Cronin kept
18 it.

19 THE COURT: So all -- she kept all of it?

20 MR. SAMUELS: Anything that she did not send to
21 Mr. Thomas, she kept. And you heard Mr. Hall state that
22 when he got out -- or I guess technically before he got
23 out, he learned that she had spent it and he didn't have
24 any at all.

25 THE COURT: So during the course of the

1 conspiracy in these numerous events when this tobacco came
2 in, there were how many times that money came out and that
3 \$1000 goes to the guard and the rest of it goes to Cronin?

4 MR. SAMUELS: Judge, if I recall from the
5 testimony today and what's in the statement of facts and
6 the report, in one week there was an amount of tobacco
7 that came in. In the second week, there was another
8 amount of tobacco that came in, and in the third week,
9 there was another amount of tobacco that came in.

10 It did not come in, you know, in a handsome
11 brick shape of tobacco. It came in little by little over
12 multiple days during the week.

13 THE COURT: That may be correct, but it's not
14 what I asked about.

15 MR. SAMUELS: Oh, I'm sorry. I misunderstood
16 your question, then.

17 THE COURT: How many times were there the
18 transactions in which the landlord, the guard, got a
19 thousand and Ms. Cronin got the other thousand?

20 MR. SAMUELS: I believe -- Judge, it was my
21 understanding that there probably was about eight
22 transactions like that.

23 THE COURT: Okay. And then there was a
24 transaction where the landlord got a thousand and the
25 defendant's mother got 900 and Cronin got 200?

1 MR. SAMUELS: Yes, sir. The correctional
2 officer got a thousand. The mother got 900. Mr. Hall got
3 zero, and Ms. Cronin got a thousand. But I think that's
4 one of the eight.

5 THE COURT: Okay. So there was -- to answer my
6 question, there were seven --

7 MR. SAMUELS: Separate from that.

8 THE COURT: -- in which the guard got a thousand
9 and Cronin got a thousand, and there was one in which the
10 guard got a thousand, the defendant's mother got 900 and
11 Cronin got 200; is that correct?

12 THE DEFENDANT: That's correct.

13 MR. SAMUELS: Yes, sir.

14 THE COURT: All right. So there were eight
15 different payoffs.

16 MR. SAMUELS: Yes, sir. Events. Yes, sir.

17 THE COURT: But in order to have enough tobacco
18 available to sell for that amount of money, to yield
19 \$2000, you had to have several deliveries of tobacco to
20 the prison?

21 MR. SAMUELS: Yes, sir. The prison guard would
22 bring in tobacco regularly.

23 THE COURT: All right. He brought it in. And
24 then what's the record show about what he did with it when
25 he brought it in? Where did it go?

1 MR. SAMUELS: I don't believe the record -- I
2 believe the record is silent about that. We acknowledge
3 that it went to my client to distribute.

4 THE COURT: And what did he do with it?
5 Stockpile it until he got the amount necessary to produce
6 what money they wanted or what?

7 MR. SAMUELS: Your Honor, the record is silent
8 as to that, but you can --

9 THE COURT: Well, he said that he paid somebody
10 inside. Who was that?

11 MR. SAMUELS: That was the inmate known as Six.

12 THE COURT: So did all of these eight
13 transactions involve delivering the tobacco to Six and
14 getting the money from Six?

15 MR. SAMUELS: Yes, sir.

16 THE COURT: Has Six been prosecuted?

17 MR. SAMUELS: No, sir. We don't have a name to
18 provide. We know -- we have other names, but not that
19 one, that we are --

20 THE COURT: Six hasn't been prosecuted?

21 MR. SAMUELS: Not to my knowledge.

22 THE DEFENDANT: He's in this paperwork stating
23 how much money he sent to Ms. Kayla. So the government
24 knows who he is.

25 THE COURT: Okay.

1 MR. SAMUELS: So even though my client does not
2 know, it would appear that the government does.

3 THE COURT: How many deliveries does the record
4 show there were to Six from your client?

5 MR. SAMUELS: I don't believe the record
6 specifically states the number of deliveries, Judge.

7 THE COURT: All right.

8 All right. Anything else?

9 MR. SAMUELS: Judge, just a reiteration, what
10 we're talking about on the high end is probably 700
11 cigarettes, if it's --

12 THE COURT: How do you know that? How do we
13 know that?

14 MR. SAMUELS: Well, Judge, in my conversations,
15 it would appear that there was a total of 7 pounds of
16 tobacco over the course of this month.

17 THE COURT: Is that in the record?

18 MR. SAMUELS: I believe it is in the record.

19 MR. PANTH: It's not.

20 MR. SAMUELS: Oh. Just --

21 THE COURT: Do you agree it was 7 pounds?

22 MR. PANTH: Candidly, Your Honor, we only have a
23 limited snapshot of information on which to make this
24 assessment; these prison phone calls, text messages from
25 Kayla Cronin. We don't have a lot of optics in terms of

1 exactly what went on in the prison.

2 So the record is silent as to the full weight --

3 THE COURT: He pled guilty and he agreed to
4 cooperate, did he, Mr. Hall did?

5 MR. PANTH: There was no cooperation agreement,
6 Your Honor. We never debriefed with him at all.

7 THE COURT: Did you debrief with Thomas?

8 MR. PANTH: We did not.

9 THE COURT: Cronin?

10 MR. PANTH: Well, I don't want to get --

11 THE COURT: Yeah. I mean, I want to know --
12 here's the thing.

13 MR. PANTH: We did debrief with Cronin,
14 Your Honor.

15 THE COURT: You all tell me that --

16 MR. PANTH: We did debrief with Cronin.

17 THE COURT: You all come in here with these
18 stories, and they're almost fanciful and ridiculous, and
19 you say you don't have enough information --

20 MR. PANTH: What is this?

21 THE COURT: -- but you've got to have some meat
22 to go on a dish.

23 MR. PANTH: We did debrief with Cronin,
24 Your Honor, and Cronin --

25 THE COURT: Well, did Cronin tell you how many

1 pounds there were?

2 MR. PANTH: Cronin did not know how many pounds
3 there were. And Your Honor had a chance to actually
4 examine Ms. Cronin's record, her medical history, how she
5 was coerced by the defendant. The defendant is the only
6 one who got an aggravated role enhancement in this
7 situation. Ms. Cronin was vulnerable. And, I mean, that
8 is the record at least that was before the Court with
9 respect to Ms. Cronin.

10 And the statement of facts here reveals that
11 Cronin did everything at the defendant's direction, this
12 defendant's direction. He's --

13 THE COURT: Okay. I'll get with -- so we don't
14 know how much was involved, really?

15 MR. PANTH: Correct.

16 THE COURT: All right.

17 MR. SAMUELS: By my math, it was about 23
18 cigarettes a day, Judge.

19 THE COURT: Where did you get that?

20 MR. SAMUELS: I took the average weight of a
21 cigarette. I took the number of pounds of tobacco that
22 were brought into the prison, based on my understanding,
23 and then I figured out how many packs of cigarettes that
24 would be, how many cartons of cigarettes that would be,
25 divided it by the number 30, and that's the number I came

1 up with.

2 THE COURT: Thirty, why? Why did you divide it
3 by 30?

4 MR. SAMUELS: Thirty days in a month. Instead
5 of 31. I was trying to be on the conservative side.

6 THE COURT: Oh, I see. All right.

7 So basically, the request for a variance boils
8 down to what, in categories? Family circumstance?

9 MR. SAMUELS: Yes, sir.

10 THE COURT: And that includes his mother and a
11 pregnant wife and other children. And then the mother's
12 situation is assisting her as she declines. And you said
13 she was in hospice. He didn't say that.

14 MR. SAMUELS: I believe maybe I misspoke.

15 THE DEFENDANT: She's not in hospice. She's in
16 very bad shape.

17 THE COURT: All right.

18 MR. SAMUELS: I only talked to her once, and I
19 must have misunderstood what she said.

20 THE COURT: And then post-offense
21 rehabilitation. Is that it?

22 MR. SAMUELS: Yes, sir.

23 THE COURT: Okay. Go ahead. Anything else on
24 the variance?

25 MR. SAMUELS: No, sir.

1 THE COURT: All right. So what about the -- the
2 same evidence applies to the departure, right?

3 MR. SAMUELS: It is, Judge.

4 THE COURT: Okay. So what's the grounds for the
5 departure? 5K1.1 doesn't fly. I've denied that one.

6 So the departure is what? 5K2. -- what?

7 MR. PANTH: 5K2.0.

8 MR. SAMUELS: Yes, sir.

9 THE COURT: What? Point what?

10 MR. SAMUELS: Judge --

11 MR. PANTH: Zero. 5K2.0 is what --

12 THE COURT: 5K2.0. That's what you say?

13 MR. SAMUELS: Yes, sir.

14 THE COURT: Okay. So what fits in there? The
15 same things?

16 MR. SAMUELS: Judge, we believe the majority of
17 those things do fit in: The mother, the child support,
18 the children, the wife, I believe the employment and
19 post --

20 THE COURT: The employment -- all that is
21 post-offense rehabilitation.

22 MR. SAMUELS: Yes, sir, you're right.

23 So that's what we would argue, Judge.

24 THE COURT: Now, 5K2.0(2), "Departures based on
25 circumstances of a kind not adequately taken into

1 consideration."

2 MR. SAMUELS: And it was our position that in
3 the presentence report the situation with his mother,
4 wife, children, et cetera, had not been taken into
5 consideration.

6 THE COURT: Well, did you read all of (2),
7 "Departures of a kind not adequately taken into
8 consideration"?

9 MR. SAMUELS: I did, but I do not have it in
10 front of me at the moment.

11 THE COURT: It says 5 -- this Subpart --
12 Chapter 5, Part K, Subpart 2, Other Grounds for Departure,
13 Identified Circumstances. "Identifies some of the
14 circumstances that the Commission may not have adequately
15 taken into consideration in determining the applicable
16 guideline range. If such circumstance is present in the
17 case and has not been adequately taken into consideration
18 in determining the applicable guideline range, a departure
19 consistent with 18 U.S.C. Section 3553(b) and the
20 provisions of this subpart may be warranted."

21 Now, what parts of the identified guidelines are
22 you relying on here in this chapter?

23 MR. SAMUELS: Judge, if I understand your
24 question --

25 THE COURT: I want you to put them in the

1 guideline section they -- that the guidelines use so we
2 can see what goes on.

3 MR. SAMUELS: Judge, I believe --

4 THE COURT: You have coercion and duress.
5 There's 5K2.12. You have diminished capacity, that's one.
6 That's not in this case. But I know -- it appears that
7 you are arguing coercion and duress, and that's one of the
8 circumstances that they identify. So which ones are you
9 proceeding on?

10 If you're going to use the departure part of the
11 guidelines, you have to go the whole mile and use the
12 whole guidelines so I know what you're talking about.
13 Otherwise, you're just making a variance motion. If
14 that's what you're doing, say that's what you're doing and
15 we'll move on with it.

16 Now, where do you put it?

17 MR. SAMUELS: I'm sorry, Judge? Where do I put
18 him?

19 THE COURT: 5K2.16, Voluntary Disclosure of the
20 Defense.

21 Do you have a guideline book with you?

22 MR. SAMUELS: No, sir. It's on my computer, but
23 I wasn't able to bring that in.

24 THE COURT: You were allowed to bring your
25 computer in. You couldn't bring a cell phone in. You

1 were given permission to bring a computer in, wasn't he?

2 THE CLERK: When I came back in from your
3 chambers, he was walking into the courtroom. So he didn't
4 have the form before he got here, Your Honor.

5 THE COURT: Oh, okay.

6 MR. PANTH: He can borrow mine.

7 THE COURT: I just need to know where you are so
8 that I can properly analyze the thing.

9 MR. SAMUELS: Yes, sir. Judge, here is my
10 theory under 5K2.10.

11 THE COURT: 2.10. All right. Let's go there.

12 MR. SAMUELS: I'm sorry. Not 2.10.

13 It's 5K2.0. I added a 1 there.

14 THE COURT: Yes, but that's just the general --

15 MR. SAMUELS: Yes, sir.

16 THE COURT: -- statement, and then it points you
17 to things that are in ensuing sections. It, in fact,
18 says, "Departures Based on Circumstances of a Kind Not
19 Adequately Taken into Consideration, (A) Identified
20 Circumstances." And then it says, "This subpart
21 identifies some of the circumstances that the Commission
22 may have not taken adequately into consideration."

23 And I'm asking you which of those, if any, are
24 you relying on? By number. Point me to them.

25 Do you want me to take a recess and give you an

1 opportunity to collect your thoughts on that and identify
2 them or are you ready to go?

3 MR. SAMUELS: Judge, I'll take the recess.

4 THE COURT: Okay. We'll take a 15-minute
5 recess.

6 (Recess from 2:51 p.m. until 3:14 p.m.)

7 THE COURT: All right. Mr. Samuels, which of
8 the identified ones, if any, are you relying on?

9 MR. SAMUELS: Judge, this is how I'm looking at
10 it, based on our conversation earlier.

11 THE COURT: Well, I can hear how you're looking
12 at it. Why don't you answer the question.

13 MR. SAMUELS: Section 5K2.12 does not apply
14 because it was not serious coercion or duress. So it does
15 not apply.

16 That means that under the general guidelines
17 under 5K2.0, it is something that has not been considered
18 because it didn't meet the qualifications of this other
19 guideline. So I think that is where the departure
20 argument becomes imperfect and that it is something that
21 should be considered but didn't meet the requirements of
22 the guideline where it would normally be considered.

23 So it's probably not -- again, like I said --
24 the strongest of the arguments. The variance under --

25 THE COURT: Well, then that makes it a variance

1 argument.

2 MR. SAMUELS: And that's what I want to argue
3 next, Judge, is the variance argument.

4 THE COURT: So basically, you don't have a
5 departure argument under 5K2.0; is that right?

6 You're using it -- you're using it as an
7 imperfect -- 5K2.12 as a predicate for an imperfect
8 variance; is that right?

9 MR. SAMUELS: Yes, sir.

10 THE COURT: Okay. Motion 34, ECF 34, relating
11 to 5K2.0 is denied as having been withdrawn.

12 All right. Now let's go back to the variance.

13 MR. SAMUELS: All right. So, Judge, under the
14 variance, you've heard the evidence. You've heard my
15 closing, essentially, at this point for the argument. I
16 don't want to belabor the point, but you've seen a changed
17 man. You've seen a gentleman who has family in need, a
18 mother who's in great need. He's about to become a
19 father. His family, they've testified, is living paycheck
20 to paycheck. His income sustains this family.

21 He has other children that he owes child support
22 for that he's finally able to start paying back after
23 eight years of them not receiving it. He has other
24 children that he's developing almost a new or different
25 relationship than what he had eight years ago. His

1 16-year-old, when he went to prison, was 8, and she's 16
2 now. He's got the opportunity, and has used it, to become
3 an integral part of her life again, which is just
4 incredible.

5 You've heard about his job and the work he has
6 done to ensure that he has stayed out of trouble, all
7 clean screens, no violations. And you can even see in his
8 record from the prison that there was this and that in
9 eight years, there was only two other incidents that were
10 resolved within the prison walls, that didn't rise to the
11 case of taking it to court. All of this he's done to
12 improve himself. And I can't say it better than Mr. Hall
13 did. He thanks God for prison because it saved him. He
14 was way on the wrong path, and he has had the opportunity
15 to be turned around, and he has turned around.

16 Additional prison at this point would not
17 provide any benefit. There is no -- I mean,
18 realistically, very few people will hear about this case.
19 There's no issue with others going, oh, I shouldn't do
20 that because this other person got this amount of prison.
21 That's not going to happen.

22 We also have the situation where he has made
23 sure that his family is taken care of. That's something
24 that people in his community will see and will recognize
25 that you don't want to go to prison because you would be

1 losing all that he's just gained back.

2 Judge, for the reasons I stated in my written
3 motion and for the reasons that you've heard on the stand
4 today from my client and my argument, we'd ask that you
5 consider home detention under 5F1.2 or a significant
6 reduction in active time.

7 And, Judge, we would also be asking not that he
8 be -- if active incarceration is on the table still, we
9 would ask that he not be considered to go today. In his
10 entire life, he's never been convicted of a failure to
11 appear. He has shown up here for every single appearance.
12 He never had any problems with that at his old -- with his
13 old charge either. And even when the Court asked to
14 continue this to today, when I called my client to tell
15 him he didn't need to come, he was already on his way
16 here. So I think that if active incarceration is there, a
17 delayed reporting is appropriate.

18 I do think that for cigarettes, three years is a
19 lot of time. Four years is too much, I believe. I
20 believe that the appropriate sentence is home
21 incarceration or an alternative to incarceration that
22 involves very little active time. Thank you.

23 THE COURT: Mr. Panth.

24 The motion for ECF Number 34 is denied.
25 Downward departure motion is denied as having been

1 withdrawn, and we're on ECF Number 33, which is the motion
2 for variance. What do you say?

3 To begin with, is there any evidence that this
4 defendant was involved with steroids as opposed to
5 tobacco?

6 MR. PANTH: There is evidence that steroids got
7 smuggled into the prison as part of this scheme. What
8 happened then, once the steroids got into the prison,
9 whether the defendant actually ended up selling them, I
10 think that's the comment that he referred to at the
11 statement -- at the plea where he said, look, I never sold
12 the steroids.

13 THE COURT: Yeah.

14 MR. PANTH: But the statement of facts is
15 crystal clear that at least on one occasion steroids got
16 brought into the prison as part of this scheme.

17 THE COURT: Well, but they weren't dealt with by
18 him, according to the record, then. It looks to me that
19 all he distributed was tobacco.

20 MR. PANTH: Yeah. And to make this very, very
21 simple, I think Your Honor -- we'll address the tobacco.
22 Let's put the steroids aside.

23 THE COURT: Yeah, let's do.

24 MR. PANTH: Let's put the steroids aside and
25 just talk about tobacco, because I think there's an

1 illusion to the fact that tobacco is -- what's the harm in
2 tobacco? Why is tobacco that serious?

3 But we'll talk about this in the context of the
4 3553(a) factors. This is about maintaining good order in
5 the prison. Tobacco, as Your Honor knows, is a currency
6 in the prison. And when you have these side illicit
7 markets for contraband that was taking place, especially
8 under a prison guard's nose, it perverts --

9 THE COURT: Let me ask something. People can't
10 have cigarettes in prison?

11 MR. PANTH: Your Honor, it's --

12 THE COURT: You can't go out in the yard and
13 smoke?

14 MR. PANTH: I -- I've never been to prison. I
15 don't --

16 THE COURT: Well, I know, but you -- your boss
17 runs the prisons.

18 You can't have cigarettes in your -- in your --
19 in your cell and smoke in the cell? You can't have
20 cigarettes in your cell and take them outside and smoke
21 them? I always thought you could.

22 MR. PANTH: Here's the critical element.

23 THE COURT: Let me put it this way. When we
24 went to -- 31 years ago at a new judge's school, they took
25 us to prison, and everybody there had cigarettes in the

1 dining hall, in their room, everywhere, and that was at a
2 time before cigarette smoking was frowned upon the way it
3 is now. But what's the rule?

4 MR. PANTH: It is a prohibited object, in terms
5 of --

6 THE COURT: You can't have a cigarette?

7 MR. PANTH: Bringing -- smuggling a cigarette
8 into prison -- the statute that -- there's a criminal
9 statute that deals with -- it counts as a prohibited
10 object for the purposes of that statute. But it's not so
11 much just the tobacco itself. It is the fact that there
12 is an illicit market, that there is this shop that is
13 taking place under the prison guard's nose where inmates
14 are coming in and transacting in this sort of way. And,
15 you know, tobacco is a currency in prison.

16 The issue is not about the tobacco itself and
17 people smoking and secondhand smoke. That's not why we're
18 here. We're here about the breakdown of order in the
19 prison, and that is a safety risk in the prison and it
20 harms people's rehabilitation. They are there in prison
21 to serve their sentence. You heard several times Mr. Hall
22 say, I just wanted to do my sentence. I didn't do
23 anything wrong in prison. He did this while he was on an
24 active term of incarceration, and that is an aggravating
25 factor here. I'll get to the whole 3553(a) factors, but I

1 want to address just a few of the things that the
2 defendant brought up as to the variance motion first.

3 The first is this -- this imperfect departure
4 under 5K2.12 based on coercion. There's no evidence,
5 besides the defendant's own word, that anybody told him to
6 do anything. And, in fact, if you look at the record, you
7 look at -- the cumulative record across these three cases,
8 this defendant is the only one who got an aggravated role
9 enhancement. Kayla Cronin got a minor role reduction.
10 You heard from the defendant that everything that Kayla
11 Cronin did was at this defendant's own direction. There's
12 not a shred of evidence in the record that Hall -- or
13 excuse me -- that Corrections Officer Thomas ever told
14 Cronin or this defendant to do anything. Not a shred of
15 evidence that he ever commanded him to do anything.

16 And, in fact, if you look through the --

17 THE COURT: Why isn't there anything in the
18 record about whose idea it was, except his testimony that
19 it wasn't his idea, it was Thomas'? Thomas came to him.

20 MR. PANTH: Right.

21 THE COURT: That's the only thing that I have in
22 the record right now, as best I can tell.

23 MR. PANTH: Well, Your Honor, I think you can --
24 there's some pretty logical inferences that Your Honor can
25 draw based on what is in the record. Look, at the end of

1 the day, I think it is true, we don't have perfect vision
2 into kind of exactly what the conversations were that took
3 place. We have a lot. We can see a lot.

4 THE COURT: I know, but what you could have done
5 is bring Thomas here and had him testify. Knowing what he
6 was saying in his papers, that he was being coerced by
7 Thomas, Thomas could have been here to say, no, I didn't
8 coerce him and that's not true.

9 MR. PANTH: Right. And that is reflected in
10 Thomas' statement of facts.

11 THE COURT: What?

12 MR. PANTH: I mean, what Thomas says that --
13 Thomas is pointing the finger at Mr. Hall, and it's a
14 little bit of this going on, right? Thomas points at
15 Mr. Hall. Hall points at Mr. Thomas.

16 THE COURT: I don't know what Thomas said.

17 MR. PANTH: So Thomas blamed Mr. Hall for -- he
18 said this was all Mr. Hall's idea. You know, I was just
19 coming off of kidney surgery.

20 THE COURT: Have you got the statement of facts?

21 MR. PANTH: I do not have it in front of me. I
22 could probably pull it up.

23 THE COURT: Thomas'.

24 MR. PANTH: Yes, Your Honor.

25 But what I'm telling Your Honor is that --

1 THE COURT: Excuse me.

2 See if you can find the statement of facts in
3 Thomas. It's another defendant in the same case. So this
4 is Defendant 001.

5 MR. PANTH: Right.

6 THE COURT: Thomas is what?

7 MR. PANTH: Well, this would be 3:24 CR -- I
8 believe it's 36, if I'm getting that correct.

9 THE COURT: Thomas is 36?

10 MR. PANTH: Yes, Your Honor.

11 THE COURT: Okay. 3:24 CR 36.

12 THE CLERK: Daniel Thomas?

13 MR. PANTH: Yes, Your Honor.

14 I'll try to pull this up here.

15 THE COURT: Thank you.

16 THE CLERK: You're welcome.

17 THE COURT: Do you have it there?

18 MR. PANTH: I am taking a look at the statement
19 of facts right now. If Your Honor will just give me a
20 moment.

21 THE COURT: I may be wrong, but in reading what
22 I've read here in ECF 14 in Case Number 3:24 CR 36, which
23 is the statement of facts in the Thomas case, I don't see
24 anything in there where Thomas says it was Hall's idea.

25 MR. PANTH: Yeah, I don't think he said it

1 explicitly, as I'm reading this. What I'm looking at here
2 is 9(b), "In return for Thomas' agreement to facilitate
3 the introduction of prohibited objects into FCC Petersburg
4 by smuggling in the prohibited objects and for not
5 interfering with CC-1's distribution, CC-1 promised to pay
6 bribes to Thomas." And I may be just conflating here,
7 Your Honor, counsel's conversations with me versus what
8 was actually reflected.

9 THE COURT: Yeah.

10 MR. PANTH: But, you know, I mean, I think the
11 statement of facts in both cases refer to an agreement
12 between Thomas and Hall.

13 But I do think it's instructive for the Court to
14 look at the statement of facts portion where there were
15 certain times when it was a slow week in this prison
16 marketplace that Hall was running, and in those times, he
17 directed Cronin to tell Thomas, "Don't bring any more
18 contraband in." And I think it's instructive because it
19 shows the Court that it's not like this was being force
20 fed down his throat. He had the capability to tell
21 Thomas, "Hey, don't bring any more in."

22 And, in fact, he did, at least on some
23 occasions, tell him, "Slow it down, don't bring anything
24 in." And that, I think, to at least some degree, belies
25 this notion that Thomas was just jamming this product down

1 Mr. Hall's throat.

2 THE COURT: It's not having the product. That's
3 not the point that was being made.

4 The point is it was -- was the involvement.
5 Let's do it. Let's do this thing together. It will take
6 two of us. It takes me to bring it in --

7 MR. PANTH: Yes, Your Honor.

8 THE COURT: -- if I'm Thomas, and it takes you
9 to get it distributed --

10 MR. PANTH: Yes, Your Honor.

11 THE COURT: -- among the inmates because I --
12 who will buy it. And Hall says -- the testimony on the
13 record here is that it was Thomas' idea and Thomas kept
14 pushing him and he finally succumbed not because he was
15 threatened, because he said he wasn't threatened, but
16 because he feared what Thomas could do to make his life
17 miserable and Thomas made illusions to that.

18 MR. PANTH: Well, and I think the last --

19 THE COURT: I think that's a fair summary of the
20 evidence.

21 MR. PANTH: That is a fair summary of the
22 defendant's statements, absolutely. But you also have to
23 look at it in the context of the -- this last portion in
24 the statement of facts where Hall tells you exactly why he
25 was doing this scheme. He doesn't say to Cronin --

1 THE COURT: Is this his statement of facts?

2 MR. PANTH: This is his own statement of facts.

3 THE COURT: In this case?

4 MR. PANTH: This is -- in Hall's case.

5 THE COURT: Yeah.

6 MR. PANTH: Exactly.

7 THE COURT: Yeah, I just want to get the right
8 one.

9 MR. PANTH: Absolutely.

10 THE COURT: What paragraph?

11 MR. PANTH: So if you look at PSR page 10.

12 THE COURT: Well, I've got the statement of
13 facts in front of me.

14 MR. PANTH: Oh, you've got the statement of
15 facts.

16 THE COURT: What paragraph is it?

17 MR. PANTH: So let's look first at 10(n),
18 subparagraph (n).

19 THE COURT: On October 30, 2022?

20 MR. PANTH: Yes, sir.

21 So Hall tells Cronin -- now, this is Hall
22 talking to Cronin saying, "I can still keep this shop up
23 and running, and then start a new shop, you know what I
24 mean."

25 This is the same month that the defendant is

1 being transferred to a different prison. We have evidence
2 on the record and in the statement of facts, we know what
3 shop means. Bike shop refers to the illicit contraband
4 that's taking place in the prison. So the same month that
5 Hall is being moved to a different prison, where Daniel
6 Thomas is not at that other prison, right? Hall is moving
7 to a different prison and he's talking about setting up a
8 new shop.

9 THE COURT: At that prison? Is that --

10 MR. PANTH: That was his words. "I can still
11 keep this shop up and running, and then start a new shop,
12 you know what I mean."

13 And I think it's a reasonable inference for the
14 Court to look at that and say he's starting a new shop at
15 the new prison that he's moving to this very month. And
16 you heard Mr. Hall's own testimony saying it was
17 October 2022 when he was being transferred to the other
18 prison.

19 THE COURT: If I were -- what do you do about
20 the next sentence, though, where it depends upon --
21 everything depends upon Thomas? It's a very rare
22 circumstance. I mean, it doesn't augur that he's going to
23 set up a shop in another prison. He says set up a shop in
24 the same prison.

25 MR. PANTH: But I think that sentence is

1 instructive because it shows you the motivation for why
2 Hall is doing what he's doing. He doesn't say, "Oh, man,
3 I wish Thomas would stop beating me down with these
4 tobacco -- with this tobacco that he's making me sell."
5 What he's saying is that this is a once-in-a-lifetime
6 opportunity. It is -- "because, you know, for real, for
7 real, me getting landlord, a shop landlord that works with
8 me the way the landlords working with me now. That's very
9 rare. That's a once in a lifetime opportunity."

10 Your Honor, I think you look at that and really
11 the only inference I can draw from that is that it is
12 greed. It is greed that is motivating this, and this
13 completely belies this notion that anybody was forcing him
14 to do anything. These are the defendant's own words that
15 same month.

16 So I -- I think especially where he talks about
17 this as a once-in-a-lifetime opportunity belies this
18 narrative that he was coerced to do any of this. I think
19 when he tells you why he did it, Your Honor should believe
20 him.

21 THE COURT: All right. Anything else?

22 MR. PANTH: Yes, Your Honor.

23 I'd like to talk also a little bit about some of
24 the other grounds for a variance that he brought up. The
25 fact that he's successfully employed, that does not take

1 him out of the heartland of other defendants who come
2 before this Court. That is just, frankly, not a proper
3 basis for a variance and that should be taken off, the
4 fact that he has a job.

5 I do want to address the fact that he is --

6 THE COURT: It isn't that he has a job. We're
7 told in *Concepcion* that we are to look at the defendant
8 not at the time of the offense but at the time of
9 sentencing.

10 MR. PANTH: Yes.

11 THE COURT: That's the message. Whether it
12 makes -- whether it's right or not is not the issue. The
13 Supreme Court has said that's the measure.

14 MR. PANTH: Yes.

15 THE COURT: So that says -- and that's in
16 context of a 404 motion for reduction of sentence.

17 MR. PANTH: Right.

18 THE COURT: But the message of *Concepcion* is
19 that these principles apply at sentencing --

20 MR. PANTH: Yes.

21 THE COURT: -- at reductions of sentencing and
22 at motions for compassionate release.

23 MR. PANTH: Absolutely. And I think we can
24 take -- we can take this in the context of --

25 THE COURT: So that means look at -- and in

1 *Concepcion*, they said you look at post-offense
2 rehabilitation. And I think I have -- I think that's the
3 way to look at it, at what *Concepcion* means, and that's
4 what we're to do.

5 MR. PANTH: Yes, Your Honor. And if I'm
6 understanding the framework correctly, this is under the
7 history and characteristics of the defendant, right?

8 THE COURT: Yeah.

9 MR. PANTH: And really what we're talking about
10 is the history -- this 3553(a) factor, is it so
11 extraordinary that it brings this defendant out of the
12 heartland of criminal defendants who normally come before
13 this Court. I think that's the threshold and that's the
14 inquiry that we're in here, and, I mean, I think the
15 record very clearly shows that it's not. And let's talk
16 about why.

17 Of all the people charged in this case, only the
18 defendant had a criminal history, and it's a pretty severe
19 one. He had so many crimes here for which he received no
20 criminal history points. Talk about domestic violence
21 against women. That's PSR paragraph 32. Criminal
22 trespassing, PSR paragraph number 31. Contempt of court,
23 PSR paragraph 34. And, you know, there's some -- it seems
24 like he was arrested for failure to appear, PSR
25 paragraph 37 as well.

1 You know, Your Honor, the defendant brought up
2 on a couple of occasions that he had only two infractions
3 while he was in prison. I don't understand why having two
4 infractions in prison is a basis for a downward variance.
5 That is not meritorious conduct, Your Honor. That's
6 aggravating conduct, if nothing else. Not only was he
7 committing this crime when he was in prison, but he was
8 also, on July 21st, 2023, cited for refusing to obey an
9 order and being insolent to a staff member, and
10 February 20th of 2019, possessing drugs and alcohol.
11 That's PSR paragraph 40.

12 The defendant also did receive criminal history
13 points for other crimes, methamphetamine trafficking in
14 2016, and as part of that scheme, he was also found to be
15 in possession of a firearm. That's PSR paragraph 40. You
16 know, I -- you've got to look at these too when you talk
17 about the history and characteristics of the defendant.

18 And to be -- to be fair, I think Mr. Hall's life
19 does reflect certain hardships that he faced, neglect of
20 his mother from drug abuse and suffering physical abuse
21 from his mother. And he appears that he wants to take
22 care of his ailing mother, and we certainly understand
23 that, but, Your Honor, none of these place this defendant
24 outside the heartland of criminal defendants who normally
25 come before this Court. None of these are so

1 extraordinary circumstances that they pull this -- that
2 they're warranting of a downward variance certainly.

3 You know, as to this point about taking care of
4 his mother as well, you know, it's -- one thing that I
5 guess we noted or didn't really fully understand here is
6 that the defendant -- the way they framed that issue was
7 that the defendant was under such stress while he was in
8 prison having a mother that was in these sort of
9 circumstances -- and I can give you an exact cite to the
10 defense papers on exactly this point. If you'll just give
11 me one moment. My technology does not seem to be working.

12 THE COURT: Does the guideline book refer to the
13 test for variances?

14 MR. PANTH: The test for variances with respect
15 to family ties and responsibly, Your Honor?

16 THE COURT: Variances at all. Does it refer to
17 variances at all?

18 MR. PANTH: I don't believe they do, Your Honor,
19 because I think it's a variance predicated on the 3553(a)
20 factors.

21 THE COURT: Yeah.

22 MR. PANTH: But, you know, even if you look at
23 it from the factor of family ties and responsibilities --

24 THE COURT: Well, what is it that provides the
25 rule for a variance?

1 MR. PANTH: It's *Diosdado-Star*.

2 THE COURT: And what does *Diosdado-Star* tell
3 us about a variance?

4 MR. PANTH: *Diosdado-Star* says that we -- I
5 might be butchering this a little bit, but we start with
6 an assessment of where the guidelines are and then we look
7 relative to that posture, and the Court must explain
8 relative to that posture any factors that are of such a
9 substantial consequence that bring it out of the ambit of
10 the guidelines.

11 THE COURT: Where is that language?

12 MR. PANTH: I thought it was *Diosdado-Star*, but
13 I could be mistaken, Your Honor. I thought that was the
14 framework of *Diosdado-Star*.

15 THE COURT: I don't think it is. It may be.

16 Get 630 F.3d 359, please, and 944 F.3d 213.

17 What I'm looking for is where you find the
18 language that talks about the way you do the 3553 analysis
19 if it operates within the context of whether it takes the
20 matter outside the heartland of the guidelines.

21 MR. PANTH: Yes, Your Honor.

22 THE COURT: I'll give you *Diosdado-Star* and ask
23 you to find it.

24 Can we give this to him, please?

25 437 F.3d 424, please.

1 MR. PANTH: So *Diosdado-Star* does not use the
2 word heartland. So I think that concept occurs probably
3 somewhere else, as far as I can see.

4 THE COURT: I just think a variant sentence is a
5 sentence that is a nonguideline sentence. And I want --
6 and that's what *Moreland* holds.

7 And then the question is you have to, of course,
8 identify the guidelines and determine why, if at all, a
9 sentence -- if you're not using the departure method, why,
10 if at all, it should not be within the guidelines.

11 MR. PANTH: Right. And I think in this
12 framework, the Court has a lot of discretion to look at
13 what the general baseline is, you know, when looking at a
14 particular factor. Because this is predicated on the
15 3553(a) factors. Really, the Court uses its own judgment
16 and has wide discretion from the Fourth Circuit to look at
17 this and make a determination of whether or not the
18 defendant's conduct is within the ambit of defendants who
19 normally come before this Court.

20 And it's a continuum, Your Honor. I think on
21 any one factor you could place the defendant within the
22 guideline range or if there's any one specific aspect of
23 this that takes him so far outside the ambit of what
24 Your Honor normally sees, you can then depart either
25 downward -- or vary, rather, downward or upward. That's

1 always been my understanding of how this works.

2 THE COURT: That's quite different than the test
3 you've been urging, though.

4 MR. PANTH: I think what -- and if I misspoke, I
5 apologize. I think what I've been urging --

6 THE COURT: I'm not criticizing you. I think
7 you're probably right, but I think it's different than
8 what you say. That's all.

9 MR. PANTH: Maybe I inadvertently said something
10 right. But I think what I was suggesting for -- that
11 Your Honor adopt is to look at -- because the defense has
12 framed this argument as a 3553(a) argument and
13 specifically under the history and characteristics of the
14 defendant. So I am bringing to light -- and my reference
15 to his criminal history was to bring in light to the Court
16 of, okay, well, if we're going to look at history and
17 characteristics of the defendant, look at all aspects of
18 that particular factor, right. It's not simply the
19 defendant saying, hey, I've got a mother who is sick. I
20 mean, even on that aspect itself, I think the government
21 still prevails that there's -- that's not a basis for a
22 downward variance because he hasn't -- that itself is not
23 enough, I would assert.

24 But then if you look at it in the broader
25 context of even that 3553(a) factor, I think that factor

1 cuts against him and actually that factor, when properly
2 considered, is an aggravating factor within the 3553
3 framework. It should pull the sentence, I think, more
4 towards the high end of the guidelines, and the government
5 could have moved even for an upward variance on the basis
6 of understated criminal history. We didn't do that here
7 because I think the 3553(a) factors allow the Court enough
8 flexibility to consider all of these things.

9 THE COURT: Well, it says -- give me a minute,
10 please.

11 Okay. In *U.S. v. McKinnie*, 21 F.4th 283 at 289,
12 the Fourth Circuit tells us that there may be sentences
13 above the guideline range through either a departure or a
14 variance. "A departure is a deviation from the guideline
15 range computed by examining the provisions of the
16 guidelines themselves, while a variance is a deviation
17 from the guidelines range based on application of the
18 statutory factors 18 U.S.C. 3553(a). An upward variance
19 can be imposed if it's justified by the 3553(a) factors,
20 as considered under the totality of the circumstances."

21 So that tells us look at all the circumstances
22 and see whether a sentence within the guideline range is
23 appropriate if you measure them by the 3553(a) factors. I
24 don't see that if they're present to an extent outside the
25 heartland of the guidelines. So that's guideline

1 departure language. Outside the heartland of the
2 guidelines is the guideline language itself.

3 MR. PANTH: And, you know, I could completely
4 have this wrong.

5 THE COURT: Just a minute. I'm continuing.

6 "The distinction between variances and
7 departures matters. Even if the but-for causation
8 standard applies to a sentencing departure under the
9 guidelines, it is not similarly required for an upward
10 variance under 3553(a)." The same thing would be true on
11 the other way, down as well as up, because it doesn't make
12 any difference which way you're going in terms of
13 assessing the principle by which you proceed.

14 "District courts need not commit themselves to a
15 specific, enumerated departure when weighing the 3553(a)
16 factors. They may thus consider evidence that a
17 defendant's actions contributed to death or serious
18 injury. That is so even if the evidence is insufficient
19 to meet the but-for causation."

20 MR. PANTH: The point I was trying to make, and
21 maybe I didn't make it so clearly, is that whether we're
22 talking a variance or a departure -- and I think this is
23 even true in terms of a variance. The Court -- the
24 critical question for the Court is variance relative to
25 what?

1 THE COURT: The variation is outside the range
2 of the guidelines, either up or down.

3 MR. PANTH: Yes, Your Honor. And to make that
4 determination, I think Your Honor uses your experience of
5 sentencing many defendants, perhaps other defendants
6 convicted of similar crimes, and you're placing these
7 defendants within your head on a continuum.

8 Some of those defendants had conduct that fell
9 within the guidelines at different points within the
10 range, and really what I think the exercise that
11 Your Honor is doing is looking at this defendant and his
12 conduct specifically, even as to the particular factors,
13 and saying, okay, well, where does that stack up relative
14 to Your Honor's own experience and common sense and
15 understanding of the baseline. What is the baseline is
16 the question.

17 So my invocation of the heartland, really the
18 concept I'm trying to get in front of the Court is that
19 nothing that the defendant has brought up is at all
20 different or dissimilar to so many defendants who come
21 before this Court, and certainly it does not weigh in the
22 defendant's favor even when you look at the history and
23 characteristics of the defendant. That was the point I
24 was trying to get across.

25 And I understand that heartland may be a

1 departure-linked concept.

2 THE COURT: Well, that also says that it's
3 proper for the Court to reach back into history and
4 measure what other people have done.

5 MR. PANTH: Yes, Your Honor.

6 THE COURT: And I'm not sure that falls within
7 the totality of the circumstances analysis that is called
8 for by the decisions we've been talking about.

9 MR. PANTH: Your Honor, I think, has a --

10 THE COURT: The variance is outside the
11 guideline sentence, and you look at the 3553(a) factors
12 and say, considering those factors, any one of them or all
13 of them together, or some combination of circumstances,
14 warrant, on the basis of an analysis of the totality of
15 the circumstances, a sentence that is greater than that
16 provided for in the guidelines or that is less.

17 MR. PANTH: Right. Okay. Well, I --

18 THE COURT: It doesn't say go look at
19 everybody -- all the other cases.

20 Now, it is correct that there is a place for
21 that analysis, and that is in the disparity of sentencing
22 component of the 3553(a) factors. It specifically
23 commands -- what is it, section 6 or 8, one of the two --
24 commands that there not be a sentence outside the
25 guidelines -- I mean that provides a disparity, and that

1 does necessitate that analysis.

2 MR. PANTH: Yes, Your Honor.

3 THE COURT: Let's see. "6. The need to avoid
4 unwarranted sentencing disparities among defendants with
5 similar records who have been found guilty of similar
6 conduct."

7 Well, but I can't make that decision at all
8 unless there is some evidence in the record about what
9 similar defendants have gotten. And I have had cases as
10 recently as yesterday, or the day before, of where there
11 were citations to the Sentencing Commission statistics
12 that say that the average person who gets a sentence for
13 possession of child pornography or for possessing a gun
14 with a magazine of a certain size, that the mean, average,
15 or whatever it is, sentencing that they cite is X, and
16 then I have something in the record that allows me to make
17 that judgment.

18 MR. PANTH: Right. There's no record here on
19 that.

20 THE COURT: But there's no -- I can't make a
21 free-standing analysis about whether somebody is in or out
22 of the heartland in a variance analysis, I don't think.

23 MR. PANTH: Okay. No. I think that's fair.
24 And maybe what's most helpful right now, let me just talk
25 about the 3553(a) factors, and this is going to be related

1 to my variance arguments and my actual sentencing
2 arguments themselves and why I think this conduct is
3 pretty bad.

4 So I think the Court --

5 THE COURT: Well, let me talk to you all for a
6 minute about this.

7 I don't think the briefing is directed properly
8 to the record that existed before the testimony as
9 respects the variance, and I don't think that the briefing
10 addresses the issue of variance the way it needs to
11 address it.

12 So I think what I'd rather do is have you all
13 have some supplemental statements of position on the
14 variance motion and key it to what the record is now,
15 because it's pretty different than what was in these
16 papers. And I have to tell you this, that in my judgment,
17 I'm having a hard time figuring out why his sentence ought
18 to be any different than Thomas'.

19 MR. PANTH: Well, if Your Honor were to give
20 him a lower -- I mean, Thomas got a low end of guidelines
21 sentence.

22 THE COURT: He got 24 months, Thomas did. Now,
23 why should his be any different than Thomas'?

24 MR. PANTH: Because he has --

25 THE COURT: He -- Thomas breached all kinds of

1 obligations, and he really was -- it couldn't have
2 happened without him. But the Hall situation is that he
3 got an aggravating role, but it was because he really was
4 directing Cronin's activities.

5 MR. PANTH: Yes, Your Honor.

6 THE COURT: And he was doing some internal
7 management within the system -- supply control, as you
8 pointed out, I think you called it. I may be wrong.

9 And I'm just not sure that the variance argument
10 has been properly examined in the way that it needs to be.
11 Because it does seem to me that his -- that they are both
12 essential cogs in the wheel of getting it done. One is
13 the bringer-inner and the other one is the distributor but
14 within. There isn't anything in the record that tells me
15 who was the driver of the boat except his testimony, which
16 was that the driver of the boat was really Thomas, which
17 says -- which is -- he pressured him into -- Thomas
18 pressured him into getting into this and he did it out of
19 apprehension, but he withdrew. He withdrew from it by
20 getting out of the situation.

21 And then -- but the -- the argument with respect
22 to the withdrawal is somewhat substantially undercut by --
23 I think it's paragraph (n), the shop, I can get a better
24 deal. I don't know exactly what that means, but I think
25 this whole topic of the variance needs to be addressed

1 more concretely and in a framework that actually starts
2 off by saying a variant sentence is this, and here is the
3 measure of a variant sentence, and here's how you look at
4 it, and using the case law and develop the structure, and
5 then tie the facts to the record.

6 And the arguments that you're making require
7 some subtle moves that may be -- subtle analytical moves
8 that may be warranted. I don't know, but they may not be
9 either. So --

10 MR. PANTH: Well --

11 THE COURT: -- I think I'd like to have
12 supplemental statements of position of a variance issue,
13 Number 33.

14 Since it's you who are making the variance
15 argument, I expect you to get into the weeds and learn it
16 and present it the right way, Mr. Samuels.

17 MR. SAMUELS: Yes, sir.

18 THE COURT: How long is it going to take you to
19 get me another brief?

20 MR. SAMUELS: Judge, what I'd like to do,
21 without getting on thin ice with the Court, is to request
22 a copy of the transcript. I'll work with them to get it
23 and figure out what the timeline is for that.

24 THE COURT: Tomorrow morning, if you pay for it.

25 MR. SAMUELS: I will pay for it.

1 THE COURT: Settle up with her when she --
2 you're going to get the transcript.

3 MR. SAMUELS: Judge, once I have that --

4 THE COURT: Are you retained or am I paying you?

5 MR. SAMUELS: You're paying me, Judge.

6 THE COURT: Okay. So -- but anyway, I do think
7 it's important to get it done while it's fresh in my mind,
8 but I also think it's Friday afternoon. It's hardly fair
9 to ask her to produce a transcript over the weekend.

10 MR. SAMUELS: I agree.

11 THE COURT: Tell him when you think you want to
12 give it to him.

13 THE COURT REPORTER: One week, seven days.

14 MR. SAMUELS: That's fine by me.

15 THE COURT: All right. Now, you'll have the
16 transcript in seven days. But in the meantime, you don't
17 need to be somnolent. You know what the issues are. Get
18 into the bookery and find out what goes on in the old
19 books. As Judge Williams used to say, "Beware of the
20 young man with the book." And this requires some booking.
21 All right. So you get to work.

22 Thinking that you will do that and get to work,
23 then when you get the transcript, how much longer do you
24 need to file?

25 MR. SAMUELS: Between two and three weeks.

1 THE COURT: Between two and three weeks is two
2 and a half weeks, and that comprises a number of days.
3 What do you want?

4 MR. SAMUELS: Judge, may I please have --

5 THE COURT: Do you want three weeks? Is that
6 what you're asking for?

7 MR. SAMUELS: Judge, we are at the 16th of
8 August. May I have until --

9 THE COURT: We are.

10 MR. SAMUELS: -- September 16th?

11 THE COURT: Yes, September 16th.

12 MR. PANTH: Your Honor, I will be out of the
13 country, without access to my devices, from September 11th
14 through September -- I want to say -- let me --

15 THE COURT: You are the most well-traveled
16 public servant I've ever been involved with.

17 MR. PANTH: Your Honor, I try to do it when I'm
18 young.

19 THE COURT: That's when you should do it.
20 Believe me.

21 MR. PANTH: I'll be back on the 19th.

22 THE COURT: When would you like to respond?

23 MR. SAMUELS: Could I just file it on the 19th
24 or the 20th so that he's not having to think about it on
25 his vacation?

1 THE COURT: Oh, that's altruistic to a fault.

2 MR. PANTH: I will be thinking about nothing but
3 this on my vacation.

4 THE COURT: I'm sure. Oh, my goodness. We've
5 gone afar.

6 MR. PANTH: All right. So, yeah, I mean,
7 I'll -- I'll just take two or three days, but if I can
8 have in the middle of -- so maybe until Tuesday, the 24th,
9 I'll have it done.

10 THE COURT: Of September?

11 MR. PANTH: September 24th.

12 THE COURT: I'll give you whatever -- a lawyer
13 is entitled to vacations. They work hard, and they are
14 very much entitled to them. One thing I learned from
15 Judge Merhige is that that's one of the reasons he would
16 give continuances and extensions, if he thought you were
17 on vacation.

18 Okay. So you're going to file yours on the
19 16th. Is that what you said?

20 MR. SAMUELS: If that's what the Court wants.
21 I'd ask for the 19th or the 20th, but I'll do what the
22 Court says.

23 MR. PANTH: If you're doing the 16th, I can get
24 it in by the 24th.

25 THE COURT: Twenty what?

1 MR. PANTH: 24th, Your Honor.

2 THE COURT: All right. And then you file your
3 reply on the 27th.

4 MR. SAMUELS: 27th.

5 THE COURT: All right.

6 So your opening is the 16th. He's the 24th.
7 Your reply is the 27th. And then we will have the
8 sentencing on October the 10th at 10 a.m.

9 MR. PANTH: Works for me, Your Honor.

10 MR. SAMUELS: Yes, sir. At 10 a.m.?

11 THE COURT: Yes.

12 Mr. Hall --

13 MR. SAMUELS: In terms of traveling from
14 Kentucky --

15 THE COURT: Where are you in Kentucky?

16 THE DEFENDANT: Lexington, Kentucky. Actually,
17 I live in Newport. I work in Lexington.

18 MR. SAMUELS: It's a ten-hour drive.

19 THE COURT: Well, Newport --

20 MR. SAMUELS: I was just trying to make sure
21 that he wasn't driving through the night.

22 THE COURT: Newport is -- did they move it?

23 THE DEFENDANT: MapQuest says 8 and a half, but
24 by the time you stop and get gas and get a little dinner,
25 it's about ten hours.

1 THE COURT: From Newport?

2 THE DEFENDANT: From Newport, Kentucky.

3 THE COURT: Huh. I guess my wife drives faster
4 than I thought she does. So you just come up the night
5 before.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Yeah.

8 MR. SAMUELS: Okay. Then it's good for us.

9 THE COURT: All right.

10 All right. I think that will produce a better
11 result here. And I'd like -- I wanted to share with you
12 my concern about the size of the sentence here, and I
13 think that it is important that you be mindful of the fact
14 that *Concepcion* tells us that you look at the person at
15 the time of sentencing, not at the time of the offense.

16 And that's important particularly in cases
17 where -- and they do say, in that respect, look at
18 post-offense rehabilitation. And that's important where
19 there is a widespread of time from the date of the offense
20 to the date of the conviction and sentencing. So those
21 are things to think about, without in any way discounting
22 the seriousness of the offense at all.

23 I give to the clerk defense exhibits. They are
24 all right here.

25 And those go with the case yesterday.

1 THE CLERK: Okay.

2 THE COURT: All right. I don't like delaying
3 things like this, but I think it's important and I don't
4 think that it's been -- the issue is presented in the
5 fashion that will produce the best results for all
6 concerned. So -- all right. We'll be in adjournment.

7 (The proceeding concluded at 4:20 p.m.)

8 REPORTER'S CERTIFICATE

9 I, Tracy J. Stroh, OCR, RPR, Notary Public in and for
10 the Commonwealth of Virginia at large, and whose
11 commission expires September 30, 2027, Notary Registration
12 Number 7108255, do hereby certify that the pages contained
13 herein accurately reflect the stenographic notes taken by
14 me, to the best of my ability, in the above-styled action.

15 Given under my hand this 23rd day of August 2024.

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17 /s/
Tracy J. Stroh, RPR

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